



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

WASHINGTON, D.C. 20460

August 28, 2018

The Honorable Bernard Sanders  
332 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senator Sanders:

Thank you for your letter dated July 23, 2018. As you know, I joined the Environmental Protection Agency (EPA) on July 9, 2018, as a Special Counsel to the Acting Administrator while I await confirmation for the position of Assistant Administrator for the Office of Land and Emergency Management (OLEM).

Please be assured that I am very sensitive to the prerogatives of the Senate and the requirements of the Federal Vacancies Reform Act. My position is a Non-Career Senior Executive Service Limited Term position, and I do not serve as the Acting Assistant Administrator. My position is not supervisory, and I do not have any delegated authority. I am not occupying the physical office of the Assistant Administrator for Land and Emergency Management, and am not carrying out the functions or authorities of any assistant administrator.

I have consulted and met with career ethics officials to ensure that I fully understand my ethical obligations. As required by 5 C.F.R. § 2634.304, I have already completed my initial ethics training for new employees. This session was conducted in person by the Alternate Designated Agency Ethics Official, who provided specific advice about the limitations applicable to my current situation.

I meet regularly with the Principal Deputy Assistant Administrator who is the Acting Assistant Administrator of OLEM. Neither the Acting Administrator, nor the Acting Assistant Administrator of OLEM or anyone else has formally delegated any duties to me.

I am enclosing a copy of my signed ethics agreement, my Trump ethics pledge and recusal statement that makes clear that I am not permitted to work on any Superfund sites at which DowDuPont is a party or represents a party. I have not sought nor intend to seek any waivers under the Trump Ethics Pledge or the financial conflict of interest statutes. My EPA email address is [wright.peter@epa.gov](mailto:wright.peter@epa.gov), and that is the only EPA email address that I have. I have been and will continue to communicate regarding work-related matters using my EPA email exclusively. I do not expect to use any different email addresses, but if I do, I will provide such other address to you.

Should I be confirmed for the position of Assistant Administrator for the Office of Land and Emergency Management, I look forward to working with you and your staff on any issues that may arise.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter Wright', written over a horizontal line.

Peter Wright

Senior Counsel to the Acting Administrator

Enclosures

BERNARD SANDERS  
MEMBER OF CONGRESS  
VERMONT, AT LARGE

Website: <http://bernie.house.gov>  
Contact: <http://bernie.house.gov/contact.htm>  
eNewsletter: <http://bernie.house.gov/buzz.htm>

FINANCIAL SERVICES

SUBCOMMITTEES  
RANKING MINORITY MEMBER:  
FINANCIAL INSTITUTIONS AND  
CONSUMER CREDIT

HOUSING AND COMMUNITY OPPORTUNITY  
DOMESTIC AND INTERNATIONAL MONETARY  
POLICY, TRADE AND TECHNOLOGY

Congress of the United States  
House of Representatives  
Washington, DC 20515-4501

GOVERNMENT REFORM

SUBCOMMITTEES  
NATIONAL SECURITY, EMERGING THREATS,  
AND INTERNATIONAL RELATIONS  
WELLNESS AND HUMAN RIGHTS

OFFICER:  
CONGRESSIONAL PROGRESSIVE CAUCUS

January 11, 2006

Shelley Blake  
United States Environmental  
Protection Agency  
1310 L Street, N.W.  
Room 413-J  
Washington, D.C. 20005

Dear Ms. Blake,

I am writing to express my full and strong support of the Association of Vermont Recycler's application to receive funds under your Indoor Environments grant.

On their behalf, I ask your full consideration of their request consistent with all laws and governing regulations of your agency. Grant money, if awarded, will help the Association of Vermont Recycler's assist up to (90) Vermont schools switch to healthier environmentally preferable cleaning products and technologies. They will help promote broad based environmental health programs in schools and grow partnerships with an impressive coalition of statewide organizations.

The Association of Vermont Recycler's request of \$117,000 from the EPA for this three year project will be combined with \$54,000 from the USDA Solid Waste Management Grant and \$60,000 from state and local sources. Vermont's state legislature enacted the Act 125 bill to establish a policy and certification system to help Vermont's schools implement environmental health programs. Responsibility for this initiative sits under the Vermont Department of Health Envision program. Since Envision is not funded to provide direct assistance, organizations like AVR have stepped forward to build capacity and move this critical goal ahead. The result of this program will be healthier school children and a Vermont school system that is nurtured to embrace comprehensive and long lasting environmental health practices.

Please keep me informed as to the status of this grant request and advise me of any decision made by your agency. My office point of contact in this matter is Roxanne Scott at (202) 225-4115. Thank you in advance for your consideration.

Sincerely



Bernard Sanders  
Member of Congress

2233 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-4501  
TELEPHONE: (202) 225-4115  
FAX: (202) 225-6790

1 CHURCH STREET, SECOND FLOOR  
BURLINGTON, VT 05401-4417  
TELEPHONE: (802) 862-0697  
TOLL FREE: (800) 339-9834  
FAX: (802) 860-6370

PRINTED ON RECYCLED PAPER

167 MAIN STREET, SUITE 410  
BRATTLEBORO, VT 05301-3000  
TELEPHONE: (802) 254-8732  
TOLL FREE: (800) 339-9834  
FAX: (802) 254-9207



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAR 09 2006

OFFICE OF  
AIR AND RADIATION

The Honorable Bernard Sanders  
U.S. House of Representatives  
Washington, DC, 20515

Dear Representative Sanders:

Thank you for your letter of January 11, 2006, supporting an application submitted by the Association of Vermont Recyclers (AVR) entitled "Vermont Schools Switch to Environmentally Preferable Cleaners" under the Environmental Protection Agency's (EPA) Request for Application (RFA) titled "Indoor Environments: Reducing Public Exposure to Indoor Pollutants." The RFA, which seeks applications from eligible entities for projects to support demonstration, training, outreach and/or education cooperative agreements that reduce indoor air pollutants and yield measurable environmental outcomes, was issued on October 18, 2005.

We appreciate your expression of interest on behalf of your constituent. In the RFA, EPA has provided the evaluation criteria it will use to evaluate the applications received in response to this solicitation. EPA will use these criteria consistent with EPA's Assistance Agreement Competition Policy, in reviewing all applications. This process ensures that we will provide all eligible applicants a fair and impartial review. Once awards have been made they will be posted at <http://www.epa.gov/iaq/>.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Peter Pagano, in EPA's Office of Congressional and Intergovernmental Relations, at 202-564-3678.

Sincerely,

A handwritten signature in black ink, appearing to read "W. L. Wehrum".

William L. Wehrum  
Acting Assistant Administrator

BERNARD SANDERS  
VERMONT

COMMITTEES  
BUDGET

ENERGY AND NATURAL RESOURCES

ENVIRONMENT AND PUBLIC WORKS

HEALTH, EDUCATION, LABOR, AND  
PENSIONS

VETERANS' AFFAIRS

# United States Senate

WASHINGTON, DC 20510-4504

332 SENATE DIRKSEN OFFICE BUILDING  
WASHINGTON, DC 20510  
(202) 224-5141

1 CHURCH STREET, 2ND FLOOR  
BURLINGTON, VT 05401  
(802) 862-0697

2 SPRING STREET, SUITE 1  
MONTPELIER, VT 05602  
(802) 223-2241

36 CHICKERING DRIVE, SUITE 103  
BRATTLEBORO, VT 05301  
(802) 254-8732

December 18, 2007

Mr. Stephen Johnson  
Administrator  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

Dear Mr. Johnson:

The Association of Vermont Recyclers (AVR) has submitted a proposal to the Environmental Education Grants program. I am writing in support of their application.

The requested funding will enable AVR to sustain and improve its successful Youth Environmental Coalition (YEC) program. In the years since its inception, YEC has encouraged young people throughout Vermont and New England to become engaged in environmental issues, and to evaluate the impact of their personal choices on our environment. With your continued support, the grassroots activities that YEC promotes will play a critical role in moving our region, and our country, toward a more sustainable future.

Thank you for your consideration. If you have any questions please feel free to contact Kelly Lucci of my staff at 802-862-0697.

Sincerely,



BERNARD SANDERS  
United States Senator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

FEB 12 2008

OFFICE OF  
CHILDREN'S HEALTH PROTECTION  
AND ENVIRONMENTAL EDUCATION

The Honorable Bernard Sanders  
United States Senate  
Washington, DC 20510-4504

Dear Senator Sanders:

Thank you for your recent letter supporting a grant proposal submitted to the Environmental Protection Agency by the Association of Vermont Recyclers (AVR). We are pleased to see that your constituents, who have received a number of our grants in past years, have now developed an innovative and successful youth environmental coalition throughout Vermont and New England to educate students about a more sustainable future.

This year, a great number of grant proposals were submitted nationwide for our Environmental Education Grant Program. The ten EPA regional offices received almost 600 proposals and at headquarters we received 80 proposals. We can assure you that your constituent's proposal will be reviewed and given fair consideration during our extensive evaluation process used to score the applications received. The two-tiered evaluation process involves a preliminary evaluation of proposals by non-EPA reviewers from universities, nonprofit organizations and other expert sources. We expect to complete the internal EPA review process before summer and will notify your constituent regarding the status of their application.

We appreciate your continued support for our grant program. Enclosed for your review is a compilation of past Environmental Education Grants awarded nationwide and listed by state with the grant profiles from AVR highlighted. If you have additional questions, please call me or your staff may call James Blizzard in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-1695.

Sincerely,

A handwritten signature in black ink, appearing to read "Dona DeLeon".

Dona DeLeon  
Acting Director

**Congress of the United States**  
**Washington, DC 20515**

June 11, 2012

Ms. Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Room 3000, Ariel Rios Building  
Washington, DC 20460

Dear Administrator Jackson,

It is our pleasure to write in support of Central Vermont Community Action Council. We understand that an Environmental Workforce Development and Job Training Grant application CFDA 66.815 has been submitted for funding consideration. We are pleased to bring this proposal to your attention.

Central Vermont Community Action Council (CVCAC), in partnership with the Vermont Departments of Corrections and Environmental Conservation, seeks to provide job development services in environmental remediation and waste management for ex-offenders in Barre City and St. Johnsbury, Vermont. Positions that demonstrate competencies in solid and hazardous waste remediation, environmental health and safety, and wastewater are in high demand in Vermont and are essential to meeting the state's aggressive waste management goals. The combination of Vermont's increased activity and awareness of environmental issues as well as the continued need to rebuild after Tropical Storm Irene demonstrates the high demand for these positions. Case-management and a hands-on training curriculum will serve 60 Vermonters over three years and will assist successful participants with the transition into full-time, immediate employment and future opportunities.

The Central Vermont Community Action Council has a proven record of effective service to Vermont. Since 2010 CVCAC has served 2,129 under- and unemployed Vermonters. We welcome the opportunity to support their efforts and look forward to their continued success.

Thank you for your positive consideration of this grant request. If we can provide further evidence of our support for this grant proposal, please do not hesitate to contact us.

Sincerely,



BERNARD SANDERS  
United States Senator



PETER WELCH  
United States Representative



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MA 02109-3912

July 11, 2012

The Honorable Bernard Sanders  
United States Senator  
One Church Street, 2<sup>nd</sup> Floor  
Burlington, VT 05401

OFFICE OF THE  
REGIONAL ADMINISTRATOR

Dear Senator Sanders:

Thank you for your letter of June 11, 2012, supporting the Environmental Workforce Development and Job Training Grant Proposal from Central Vermont Community Action Council. I appreciate your interest in the program and your support of the Central Vermont Community Action Council's proposal.

As you know, the Small Business Liability Relief and Brownfields Revitalization Act assists states and communities throughout the country in their efforts to revitalize and reclaim brownfields sites. In 2010, the Office of Brownfields and Land Revitalization led an effort to more closely collaborate on workforce development and job training with other programs within EPA. Through the newly expanded Environmental Workforce Development and Job Training Grant Program, EPA is working to help states and communities throughout the nation put unemployed and underemployed citizens back to work by training them to clean up and revitalize brownfields and other hazardous waste sites, as well as to address other environmental issues in their respective communities.

This year's application process was highly competitive, with EPA evaluating 76 grant proposals. From these proposals, EPA was recently able to announce the selection of 15 grants.

EPA's selection criteria for grant proposals are available in the *FY 12 Environmental Workforce Development and Job Training Grant Guidelines (February 2012)*, posted on our brownfields website ([www.epa.gov/brownfields](http://www.epa.gov/brownfields)). Each proposal is carefully reviewed and evaluated by a selection panel which applies the objective criteria of these guidelines in this highly competitive program. Be assured that the grant proposal submitted by the Central Vermont Community Action Council was given every consideration. Unfortunately, this organization was not funded this year. However, we do encourage them to resubmit their application in next year's competition. We also encourage the applicant to contact EPA for a debriefing on this year's proposal.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Rudy Brown in the Office of Government Relations at (617) 918-1031.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Curtis Spalding", is written over the word "Sincerely,".

H. Curtis Spalding  
Regional Administrator

# United States Senate

WASHINGTON, DC 20510

May 20, 2015

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

The Honorable Ernest Moniz  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585

Dear Administrator McCarthy and Secretary Moniz:

We are writing to highlight the water and wastewater utility sector's ability to play a significant role in reducing energy consumption and greenhouse gas emissions. By investing in energy efficiency measures for water and wastewater utilities, states would benefit from lower water rates, improved infrastructure for economic growth, verifiable energy efficiency improvements, and reduced greenhouse gas emissions. Therefore, we ask the Environmental Protection Agency (EPA) to view such investments as a positive element of a state's implementation plan under its forthcoming Clean Power Plan. In addition, we urge the EPA and the Department of Energy (DOE) to work together to identify which energy efficiency measures would yield the greatest verified reductions in energy use, ratepayer costs, and emissions.

Delivering water and wastewater services is an energy-intensive effort, in which water is treated, pumped to our homes and businesses, and then pumped to wastewater facilities to be treated again. Information about the energy that is consumed in these processes is outdated and fragmented, but the Electric Power Research Institute has estimated that moving and treating water and wastewater uses 2-4 percent of the nation's electricity. And this energy consumption can make up a significantly larger fraction of the energy used on a local or regional scale: water and wastewater utilities are typically the largest users of energy in municipalities, often accounting for 30-40 percent of total energy use.

The energy consumed by water and wastewater utilities can be dramatically reduced through many untapped energy efficiency opportunities. For example, the EPA estimates that potential savings of 15-30 percent are readily achievable in water and wastewater plants, with significant financial returns and payback periods of only a few months to a few years. Moreover, water and wastewater utilities could save \$400 million annually if they reduced energy use by just 10 percent through demand management strategies and cost-effective investments in energy efficiency. Such savings are especially important because they would ultimately be passed on to families and businesses in the form of lower utility rates.

Given the fact that water and wastewater utilities represent a vital sector for substantial energy efficiency opportunities, we believe that investments in energy efficiency improvements would allow states to benefit from lower water rates, improved infrastructure for economic growth, and verifiable energy efficiency improvements. Therefore, we urge the DOE and EPA to work together in identifying which energy efficiency measures will result in the greatest financial returns for utilities and savings for their ratepayers.

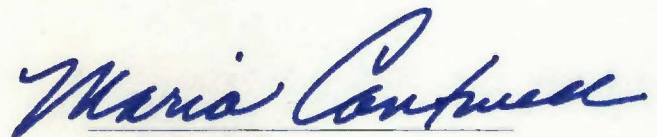
Such investments would also help states reduce carbon emissions from the energy used by water and wastewater utilities, which are estimated to be 45 million tons per year. Thanks to the flexibility provided by the EPA, energy efficiency is one of the tools that states can use to meet their emissions reduction targets under the forthcoming Clean Power Plan (CPP). And we believe that energy efficiency improvements for water and wastewater utilities may be an important component of many state implementation plans for the CPP. Therefore, we urge the EPA to encourage states to include water and wastewater utilities in the development of their implementation plans for the CPP. We also ask the EPA to view energy efficiency improvements at water and wastewater utilities as a positive element of a state's implementation plan under the CPP. Finally, we urge the EPA and DOE to work together in conducting a study to identify uniform measures for verifying energy efficiency savings at water and wastewater utilities.

Thank you for taking our views into consideration and do not hesitate to contact us if we can be helpful in making progress on this important policy issue.

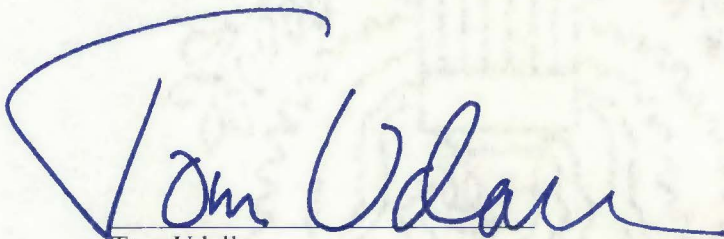
Sincerely,



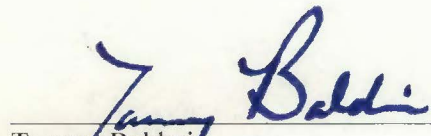
Al Franken  
United States Senator



Maria Cantwell  
United States Senator



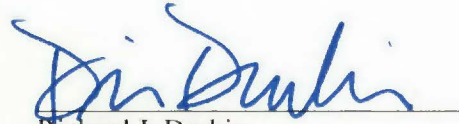
Tom Udall  
United States Senator



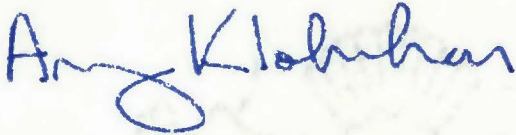
Tammy Baldwin  
United States Senator



Bernard Sanders  
United States Senator



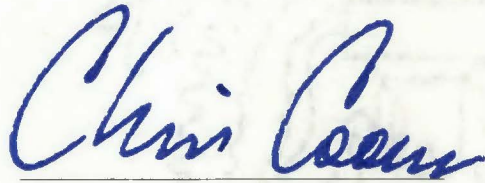
Richard J. Durbin  
United States Senator



Amy Klobuchar  
United States Senator



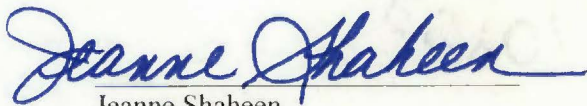
Mazie Hirono  
United States Senator



Chris Coons  
United States Senator



Martin Heinrich  
United States Senator



Jeanne Shaheen  
United States Senator



OCT 27 2015



The Honorable Bernard Sanders  
United States Senate  
Washington, DC 20510

Dear Senator Sanders:

Thank you for your May 20, 2015, letter to the Department of Energy (DOE) and the Environmental Protection Agency (EPA). In your letter, you ask that EPA view investments in energy efficiency measures for water and wastewater utilities as a positive element of a state's implementation plan under the Clean Power Plan. In addition, you urge EPA and DOE to work together to identify which energy efficiency measures would yield the greatest verified reductions in energy use, ratepayer costs, and emissions.

As you know, on August 3, 2015, President Obama and EPA announced the final Clean Power Plan for existing power plants. The Clean Power Plan is a historic and important step in reducing carbon pollution from power plants that takes real action on climate change. With strong but achievable standards for power plants, and customized goals for states to cut the carbon pollution that is driving climate change, the Clean Power Plan provides national consistency, accountability and a level playing field while reflecting each state's energy mix. It also shows the world that the United States is committed to leading global efforts to address climate change.

Climate change is one of the greatest environmental and public health challenges we face. Climate impacts affect all Americans' lives – from stronger storms to longer droughts and increased insurance premiums, food prices, and allergy seasons. Taking action now is critical. Reducing CO<sub>2</sub> emissions from power plants, and driving investment in clean energy technologies and strategies that do so, is an essential step in lessening the impacts of climate change and providing a more certain future for our health, our environment, and future generations. The EPA will continue to work with stakeholders to implement the Clean Power Plan and reduce carbon pollution through a flexible process that meets their needs.

The final rule is the result of unprecedented outreach to states, tribes, utilities, stakeholders and the public. The 4.3 million comments EPA received provided a tremendous number of ideas – including recognizing energy efficiency measures for water and wastewater utilities as a positive element of a state plan. Thus, you'll find specific mention of water system efficiency in section VIII.K.1 of the final rule as a demand-side energy efficiency measure that may be used to adjust a CO<sub>2</sub> emission rate in rate-based state plans.

Building on recent success in working with water and wastewater facilities to improve energy efficiency, EPA plans to highlight these opportunities – as well as many other energy efficiency opportunities – as part of the outreach to states and stakeholders as they develop their state plans under the Clean Power Plan.

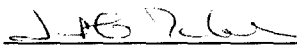
In 2013, EPA released a guide entitled, “Energy Efficiency in Water and Wastewater Facilities: A Guide to Developing and Implementing Greenhouse Gas Reduction Programs,” to help local policy makers and program staff design, implement, and evaluate energy efficiency measures to reduce greenhouse gas emissions from drinking water and wastewater facilities. Topics covered include: a step-by-step approach to benchmarking and improving energy efficiency in these facilities; environmental and economic benefits; key stakeholders to engage; policy mechanisms for initiating programs; implementation strategies for success; and costs and funding opportunities.

Regarding your request that EPA and DOE work together to identify which energy efficiency measures undertaken by water and wastewater utilities would yield the greatest verified reductions in energy use, ratepayer costs, and emissions, EPA and DOE work closely with each other and with other agencies and organizations in this space. Through regular engagement, joint workshops, and technical assistance programs, EPA and DOE are working to advance development and deployment of energy efficiency and energy production measures at water and wastewater treatment plants. For example, on April 28-29 of this year, the National Science Foundation (NSF), EPA, and DOE jointly convened a workshop entitled, “Energy Positive Water Resource Recovery” that addressed these issues.

Lastly, in June 2014, DOE released a report, “The Water-Energy Nexus: Challenge and Opportunities,” which lays out an array of technical, operational, and institutional challenges across the water-energy nexus at local, regional, and national scales. The report identified six strategic pillars that serve as the foundation for coordinating DOE’s ongoing research and development. One of those pillars is to optimize the energy efficiency of water management, treatment, distribution, and end use systems. DOE will continue to work with EPA and other partners to pursue this strategic pillar.

Thank you again for your letter and for engaging with us on this important policy issue.

Sincerely,



Janet McCabe  
Acting Assistant Administrator  
U.S. Environmental Protection Agency



Melanie Kenderdine  
Director for Energy Policy  
and Systems Analysis  
U.S. Department of Energy

# Congress of the United States

Washington, DC 20510

March 31, 2015

President Barack Obama  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear President Obama:

Thank you for your leadership in responding to the serious challenge of climate change. We applaud and support your Climate Action Plan, the joint announcement with China establishing ambitious carbon pollution reduction targets, and the national commitment to the Green Climate Fund. These actions are critical to protect Americans from the most dangerous effects of climate change.

Americans are already shouldering the costs of climate change, and these costs are getting worse. Climate change is driving more severe drought and wildfires in the West, larger and more frequent floods in the Midwest, and sea level rise and greater storm damage along our coasts. Vulnerable populations, like children with asthma and the elderly, are suffering from higher levels of smog in our cities and longer, more severe heat waves. Farmers and ranchers are struggling with crop and livestock losses from drought. Increasingly acidic oceans are harming shellfish populations and threatening fisheries. Communities are struggling to pay for infrastructure damaged by fires, more extreme storms, and coastal erosion.

One of the three pillars of the Climate Action Plan is to lead international efforts to address global climate change. As a nation that has contributed more than a quarter of all global carbon pollution, it is our responsibility to lead. As a nation already feeling the effects and costs of climate change, it is also in our national interest to do so. In order to solve the problem of climate change, it is essential that the United States has allies in cutting carbon pollution. As we have seen time and time again, other countries will join us, if America leads the way.

As the parties to the United Nations Framework Convention on Climate Change (UNFCCC) prepare to meet at the end of the year, they have agreed that each nation will pledge to reduce its carbon pollution in an amount and manner to be determined by each nation and that puts the world on a strong trajectory to address climate change. Proactive engagement in these negotiations, backed up by domestic climate action, is the best way to protect our nation's interests and ensure every country does its fair share.

The strong target announced by the United States, along with reciprocal commitments from China and the European Union, sets the stage for a meaningful climate agreement this year. Because the U.S. and China are the largest two emitters of carbon pollution and together with the

E.U. are collectively responsible for more than half of the world's energy sector emissions, the recent commitments by our countries represent significant progress. This progress is strengthened by the recent U.S.-India commitment to work together to achieve a successful and ambitious global climate agreement this year. The United States' pledge of \$3 billion to the Green Climate Fund continues to demonstrate our history of partnering with the least developed countries to help them grow their economies in ways that take into account the impacts of climate change.

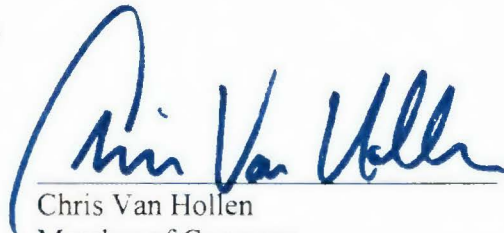
We stand ready to help you seize this opportunity to strengthen the global response to climate change. Your Administration has made significant progress in reducing U.S. emissions, including through improvements in vehicle fuel efficiency standards and other areas that are saving consumers and businesses money, reducing air pollution, creating jobs, and putting America back in control of our energy security. We applaud the Administration's continued use of its existing authority to cut carbon pollution, in particular EPA's standards to limit carbon pollution from power plants under the Clean Air Act, and your efforts under the UNFCCC.

Thank you again for your leadership in fighting devastating climate change to protect American families today and for generations to come.

Sincerely,



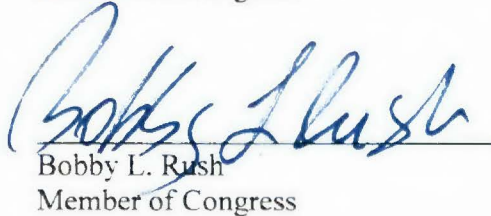
Sheldon Whitehouse  
United States Senator



Chris Van Hollen  
Member of Congress




Benjamin L. Cardin  
United States Senator



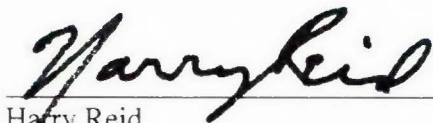
Bobby L. Rush  
Member of Congress



Edward J. Markey  
United States Senator



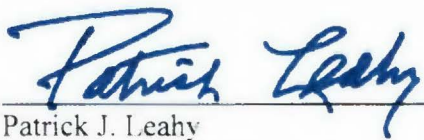
Earl Blumenauer  
Member of Congress



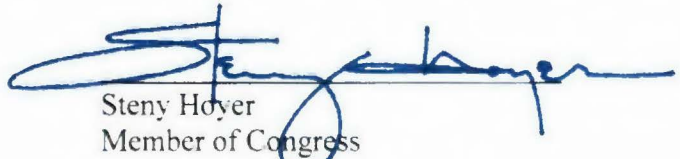
Harry Reid  
United States Senator



Nancy Pelosi  
Member of Congress



Patrick J. Leahy  
United States Senator



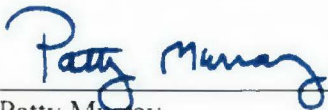
Steny Hoyer  
Member of Congress



Richard J. Durbin  
United States Senator



Charles E. Schumer  
United States Senator



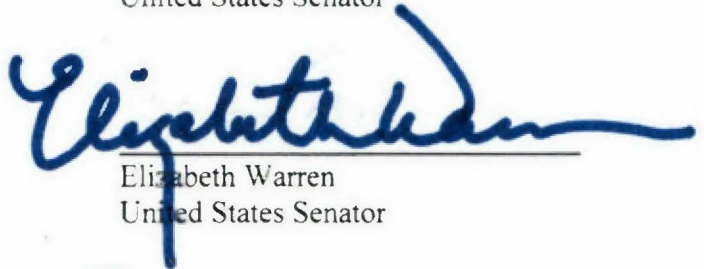
Patty Murray  
United States Senator



Debbie Stabenow  
United States Senator



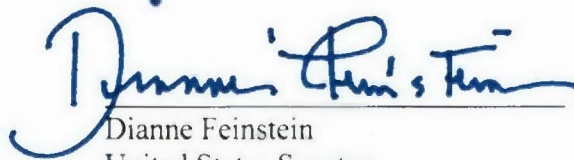
Amy Klobuchar  
United States Senator



Elizabeth Warren  
United States Senator



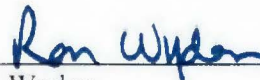
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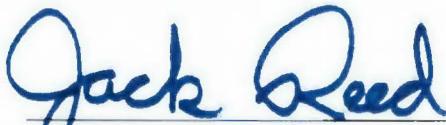
Dianne Feinstein  
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Barbara Boxer  
United States Senator



Ron Wyden  
United States Senator



Jack Reed  
United States Senator



Thomas R. Carper  
United States Senator



Maria Cantwell  
United States Senator

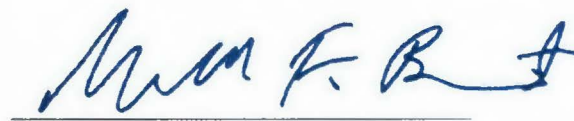


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Tom Udall  
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Jeanne Shaheen  
United States Senator


  
Jeffery A. Merkley  
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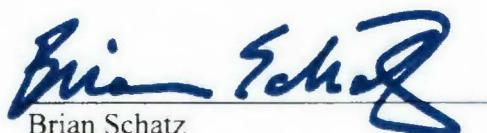
  
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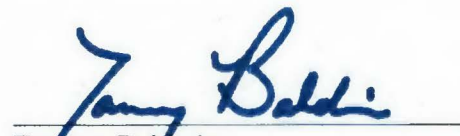
  
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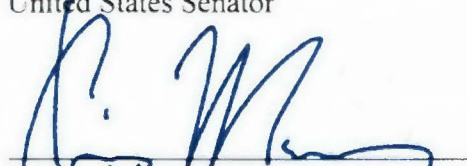
  
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Christopher A. Coons  
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Richard Blumenthal  
United States Senator

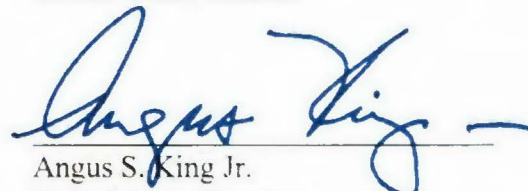
  
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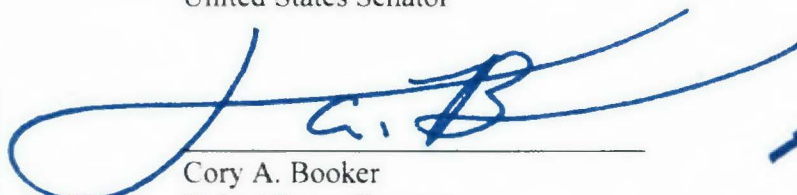
  
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Christopher Murphy  
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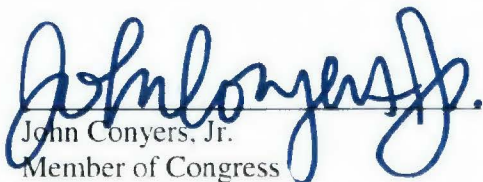
  
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Martin Heinrich  
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Angus S. King Jr.  
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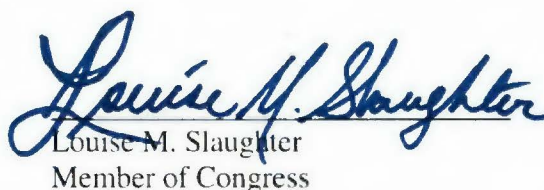
  
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John Conyers, Jr.  
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Charles B. Rangel  
Member of Congress

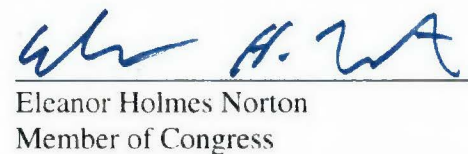
  
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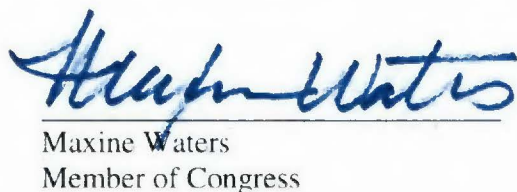
  
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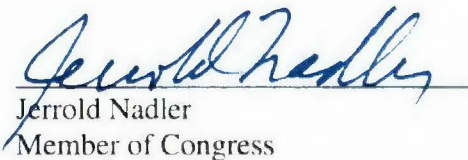
  
Frank Pallone, Jr.  
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Eliot L. Engel  
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Jim McDermott  
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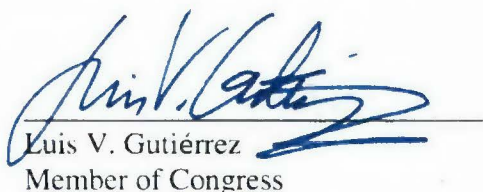
  
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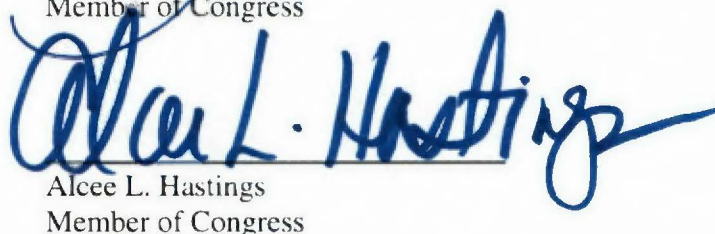
  
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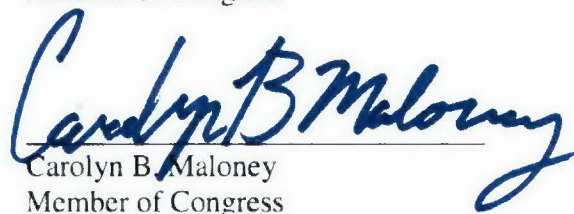
  
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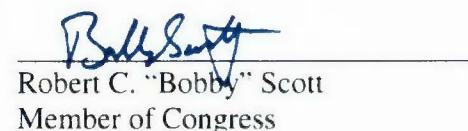
  
Corrine Brown  
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Anna G. Eshoo  
Member of Congress

  
Luis V. Gutiérrez  
Member of Congress

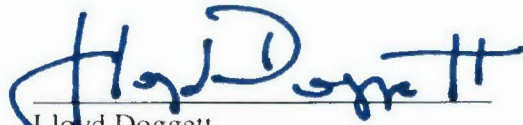
  
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Member of Congress

  
Carolyn B. Maloney  
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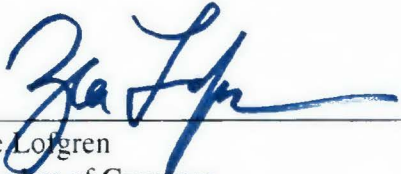
  
Robert C. "Bobby" Scott  
Member of Congress



Sam Farr  
Member of Congress



Lloyd Doggett  
Member of Congress




Zoe Lofgren  
Member of Congress



Diana DeGette  
Member of Congress



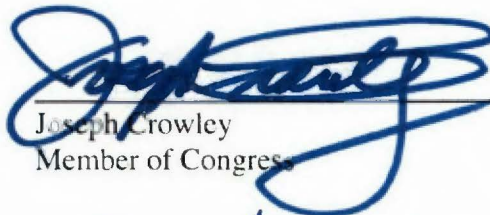
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Lois Capps  
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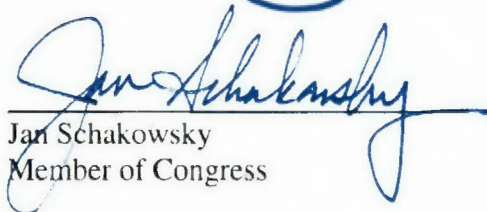
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Joseph Crowley  
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John B. Larson  
Member of Congress



Jan Schakowsky  
Member of Congress



Mike Thompson  
Member of Congress



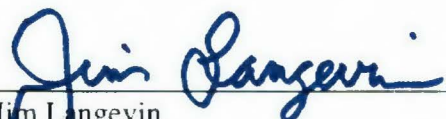
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Michael M. Honda  
Member of Congress



Steve Israel  
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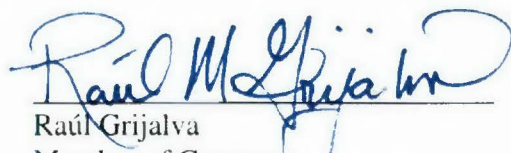
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Rick Larsen  
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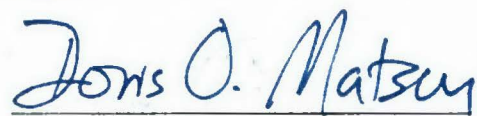
  
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Member of Congress

  
Adam B. Schiff  
Member of Congress

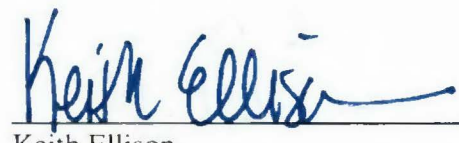
  
Raúl Grijalva  
Member of Congress

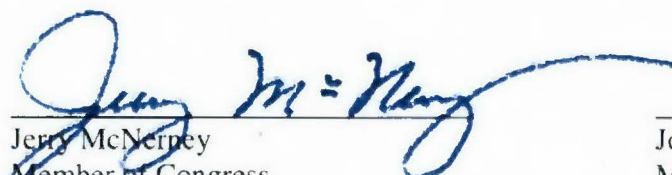
  
Emanuel Cleaver  
Member of Congress


  
Dan Lipinski  
Member of Congress

  
Doris O. Matsui  
Member of Congress


  
Yvette D. Clarke  
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Keith Ellison  
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Jerry McNerney  
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John P. Sarbanes  
Member of Congress

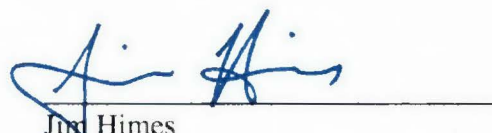
  
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John Yarmuth  
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Jackie Speier  
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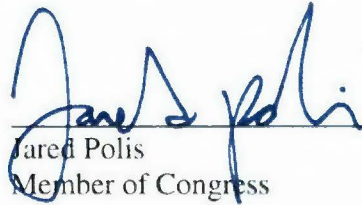
  
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Member of Congress

  
Gerald E. Connolly  
Member of Congress

  
Jim Himes  
Member of Congress



Chellie Pingree  
Member of Congress



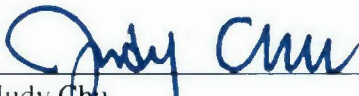
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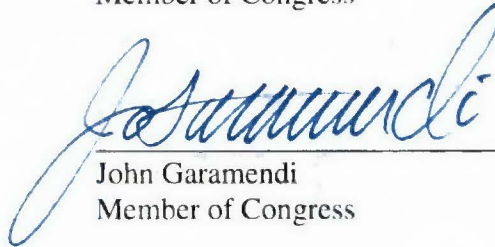
Paul Tonko  
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Mike Quigley  
Member of Congress



Judy Chu  
Member of Congress



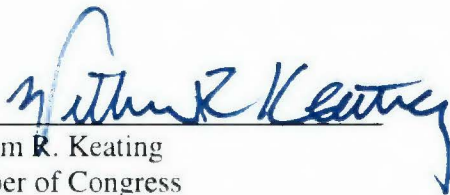
John Garamendi  
Member of Congress



Ted Deutch  
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David N. Cicilline  
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William R. Keating  
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Frederica S. Wilson  
Member of Congress



Julia Brownley  
Member of Congress



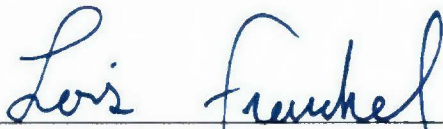
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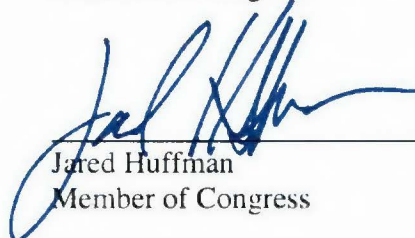
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Member of Congress



Elizabeth H. Esty  
Member of Congress



Lois Frankel  
Member of Congress



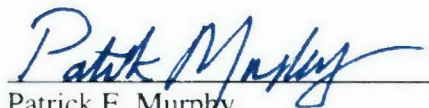
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Ann McLane Kuster  
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Alan Lowenthal  
Member of Congress



Patrick E. Murphy  
Member of Congress



Scott Peters  
Member of Congress



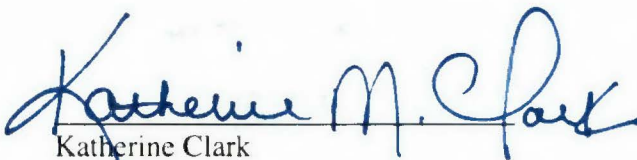
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Member of Congress



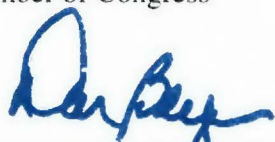
Eric Swalwell  
Member of Congress



Mark Takano  
Member of Congress



Katherine Clark  
Member of Congress



Donald S. Beyer, Jr.  
Member of Congress



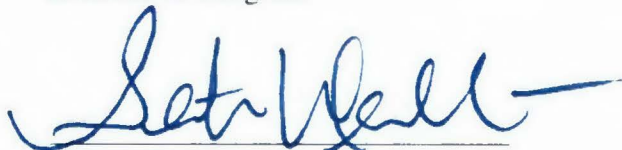
Brendan F. Boyle  
Member of Congress



Mark DeSaulnier  
Member of Congress



Ted W. Lieu  
Member of Congress



Seth Moulton  
Member of Congress



Mark Takai  
Member of Congress

# United States Senate

WASHINGTON, DC 20510

January 12, 2017

Kevin Minoli  
Designated Agency Ethics Official  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

Dear Mr. Minoli:

We are in receipt of the Office of Government Ethics [OGE] certified financial disclosure report [Form 278] of Edward Scott Pruitt, and Mr. Pruitt's letter to you outlining the steps he will take to avoid conflicts of interest should he be confirmed as Administrator of the Environmental Protection Agency [EPA]. We are concerned that his representations to date have been incomplete. Without a fuller disclosure of financial and political relationships, EPA may not have sufficient information to evaluate whether Mr. Pruitt should be recused from many matters about which a reasonable person would question his impartiality. We are also concerned that his ethics agreement does not fully address how legal conflicts of interest arising from his representation of the State of Oklahoma in litigation against EPA will be resolved.

With respect to Mr. Pruitt's financial conflicts of interest and his Form 278 disclosures, Mr. Pruitt represents he will not participate personally and substantially in particular matters involving: Southern Baptists Theological Seminary, the Windows Ministry Incorporated, and the Rule of Law Defense Fund [RLDF]. In the attached letter we are sending today to OGE, we have raised concerns that this accounting does not include sufficient detail to allow OGE or EPA to fully assess conflicts of interest arising from his solicitation of funds for 527 and 501(c)(4) organizations, some of which may continue to operate during his tenure as EPA Administrator, should he be confirmed.

For example, RLDF can receive unlimited contributions from individuals, corporations, or partnerships and need not disclose the identity of its donors because it is organized under section 501(c)(4) of the Internal Revenue Code. The RLDF has previously contributed to section 527 political action committees [PACs] like the Republican Attorney Generals Association, effectively laundering the identity of donors whose money ended up funding overtly political purposes. What safeguards will EPA put in place to guard against Mr. Pruitt's involvement in matters involving regulated entities that contribute either publicly or anonymously to PACs and 501(c)(4) organizations with which he has had a prior relationship? In other words, what assurances will we have that regulated entities did not and will not make political contributions in exchange for favorable treatment by him as Administrator? Reporting in the *New York Times* and elsewhere has documented the real risk of pay-to-play arrangements with this nominee.

With respect to conflicts of interest arising from his position as Attorney General of the State of Oklahoma, Mr. Pruitt makes little more than pro forma representations that he will seek your authorization for a one-year period of time concerning matters in which the State of Oklahoma is a party or represents a party. As you may be aware, Mr. Pruitt has brought multiple lawsuits against EPA on behalf of the State of Oklahoma, many of which remain in active litigation with

entities that have contributed large sums of money to RAGA and other PACs with which Mr. Pruitt is affiliated.

- Could you provide us a complete list of matters that in your opinion will require your authorization?
- What factors will you use to assess whether authorization will be granted? What factors will you use to determine how broadly any recusal, if required, must be drawn? For example, Mr. Pruitt has challenged EPA's carbon pollution standards for power plants. Assuming that a recusal would be required in that matter, would it be limited to decisions regarding the litigation, or to other matters considered by the Office and Air and Radiation?
- Mr. Pruitt has agreed to not participate in any particular matter involving the RLDF without prior authorization. RLDF's activities and donors are largely secret. Without more extensive disclosures about RLDF and Mr. Pruitt's role in it, how will you determine whether a particular matter involves the RLDF?
- The ethics agreement entered into by former EPA Administrator Carol Browner included a clear and permanent recusal of her participation in any EPA matter in which the State of Florida was involved as a party and she was involved personally and substantially as Secretary of the Florida Department of Environmental Regulation. Our understanding of Mr. Pruitt's ethics agreement is that he has made no such unequivocal pledge. Why has EPA concluded that a more lenient arrangement for Mr. Pruitt's conflicts is appropriate?
- Mr. Pruitt has agreed to seek your authorization for a one-year period of time. Is it your understanding that any recusal you may require of Mr. Pruitt would be limited to this one-year period? If so, how will you account for his participation in matters after that one-year period where the conflict still exists, like litigation that he has brought against the agency that has not settled or been decided by that time?
- Mr. Pruitt has sued EPA on behalf of the State of Oklahoma. Before authorizing him to participate in EPA decisions involving Oklahoma, how will you determine whether Mr. Pruitt has obtained consent from his client to be released from ethical obligations he may have to it?
- Many of Mr. Pruitt's lawsuits have involved multi-state coalitions. Presumably he has entered into joint prosecution agreements with his co-plaintiffs. Have you reviewed, or will you review, these agreements to assess whether Mr. Pruitt has a "covered relationship" with other states or parties in those lawsuits? Is it your opinion that he would also have to obtain consent from his co-plaintiffs to participate in matters in which EPA's position is adverse to those states?
- It is a general principle of legal ethics that an attorney may not disclose privileged information without the client's consent. Furthermore, in multi-party litigation when two or more clients with a common interest in litigation agree to exchange otherwise privileged information concerning the matter, the communication is privileged as against third persons. Have any provisions been put in place to prevent the unauthorized disclosure by Mr. Pruitt of confidential client information, either from the State of Oklahoma or other state-plaintiffs in Mr. Pruitt's litigation?

- Pursuant to 42 U.S.C. § 7601(d), the authority of the Administrator to issue rules related to topics listed in 42 U.S.C. § 7607(d) is not delegable. How will you address a situation where you determine Mr. Pruitt has a conflict of interest with respect to a rule covering one of these topics?
- If a recusal is determined appropriate in any matter, has the nominee agreed to forgo any briefings during the period of the recusal?
- Under what obligation is Mr. Pruitt to follow determinations made by you concerning his recusals and waivers? If he chooses not to follow your determinations, what recourse is available for EPA?

We are committed to protecting the integrity of the EPA. All Americans should have confidence that EPA's decisions are made transparently, without favor to political donors, and by an Administrator who is committed to protecting the prerogatives and mission of the agency, not those suing it. The EPW Committee has scheduled Mr. Pruitt's confirmation hearing for January 18<sup>th</sup>. Accordingly, we respectfully request responses to these questions prior to the date of the hearing.

Sincerely,



Thomas R. Carper  
United States Senator



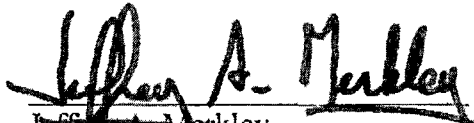
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United States Senator



Benjamin L. Cardin  
United States Senator



Bernard Sanders  
United States Senator



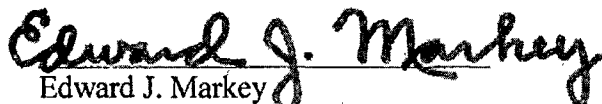
Jeffery A. Merkley  
United States Senator



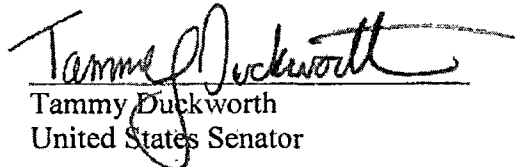
Kirsten Gillibrand  
United States Senator



Cory A. Booker  
United States Senator



Edward J. Markey  
United States Senator



Tammy Duckworth  
United States Senator

Enclosure: letter to Walter M. Shaub, Jr., Director of the U.S. Office of Government Ethics

CC: Justina Fugh, Senior Counsel for Ethics Office of General Counsel, U.S. Environmental Protection Agency

# United States Senate

WASHINGTON, DC 20510

January 12, 2017

Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, NW  
Washington, D.C. 20005

Dear Mr. Shaub:

Thank you for your continuing efforts to ensure Senate committees, like the Senate Environment and Public Works Committee [EPW] on which we serve, have the information we need to review potential conflicts of interest faced by nominees of President-elect Trump.

We are in receipt of the Office of Government Ethics [OGE] certified financial disclosure report [Form 278] of Edward Scott Pruitt, nominee to be the Administrator of the Environmental Protection Agency [EPA]. After reviewing Mr. Pruitt's information, we are concerned that the record presented may not provide a complete picture of ethical issues faced by this nominee.

Since the Supreme Court's decision in *Citizens United*, we have entered into an unprecedented and dangerous time in which massive and often anonymous corporate political spending threatens to corrupt our government. OGE's ethics review focuses primarily on a nominee's personal financial interests, and appears not to address a nominee's history of political solicitations and activity. Corporations spend their money to get results, so it is now more important than ever that we have a full disclosure of a nominee's ties to the industries he or she will be charged with regulating. This is particularly important where a nominee may have solicited or raised "dark money" from interests to which they thus may be beholden.

During his tenure as Attorney General of Oklahoma, Mr. Pruitt has blurred the distinction between official and political actions, often at the behest of corporations he will regulate if confirmed to lead EPA. While the disclosures Mr. Pruitt made to OGE may be sufficient to ascertain his personal financial conflicts of interest, they do not document conflicts he may have as a result of political activities. Public reporting based on documents produced by Freedom of Information Act requests illustrate how Mr. Pruitt and members of his staff have worked closely with fossil fuel lobbyists to craft his office's official positions. Public reporting has also identified numerous potential conflicts of interest not disclosed on his Form 278 or addressed in his ethics agreement. For example:

- Pruitt indicated on his Form 278 that he has served in various positions, including Chairman, of the Rule of Law Defense Fund [RLDF] since 2014. Because RLDF is organized under section 501(c)(4) of the Internal Revenue Code, it can receive unlimited contributions from individuals, corporations, and partnerships and need not disclose the identities of its donors, donors who may have been solicited directly by Mr. Pruitt in exchange for the RLDF advocating certain positions.

- Although Mr. Pruitt served as Chairman of the Republican Attorney Generals Association [RAGA] for two terms, his affiliation was not listed on his OGE disclosures. Since 2014, RAGA has received nearly \$4 million from fossil fuel-related entities, many of which are either companies regulated by EPA or industry trade associations.<sup>1</sup> According to campaign finance records and the RLDF's 990s, hundreds of thousands of dollars have passed between the RLDF and RAGA. Recently released emails show that RAGA has provided services such as chartered airplane flights to its members. Mr. Pruitt's OGE disclosures do not include information about any gifts or in-kind donations Mr. Pruitt received from RAGA or other groups with which he's been involved.
- It has been reported that Mr. Pruitt is, or has been, affiliated with at least three other political action committees [PACs]: Liberty 2.0, Oklahoma Strong Leadership, and Scott Pruitt for Attorney General. These PACs have received contributions from numerous corporations that are regulated by EPA.<sup>2</sup> Many of these are challenging EPA standards in court along with Mr. Pruitt. Mr. Pruitt's OGE disclosures do not include any of this information.<sup>3</sup>

To better understand the types of information Mr. Pruitt is required to disclose and the potential conflicts of interest that may remain outstanding, we would appreciate answers to the following questions:

- Did Mr. Pruitt provide OGE any information about the identity of RLDF donors, amounts contributed, and any promises made or actions taken by him or the RLDF in exchange for donations made to it?
- Did Mr. Pruitt provide OGE any information about his positions with RAGA, any role he played soliciting money for RAGA, what resulted from those solicitations, or any promises made or actions taken by him or RAGA in exchange for donations made to it?
- Did Mr. Pruitt provide OGE with any information about gifts, such as any RAGA-sponsored chartered flights he may have been on?
- Did Mr. Pruitt disclose contributions to section 527 PACs operating on his behalf?
- Does OGE require nominees to provide information about the types of groups described above as part of its vetting process? If so, is OGE satisfied that it has received complete disclosures from Mr. Pruitt? Is OGE aware of any other avenues that will require Mr.

<sup>1</sup> These include Devon Energy, ExxonMobil, Koch Industries, Murray Energy, and Southern Company, and several industry trade associations, such as the American Petroleum Institute, American Fuel and Petrochemical Manufacturers, and National Mining Association. All of these entities have been involved in litigation Mr. Pruitt has pursued against the EPA and representatives from at least three had private meetings with Republican Attorneys General and staff at RAGA events.

<sup>2</sup> Murray Energy was the leading contributor to Liberty 2.0 in the 2016 election cycle and executives from Devon Energy and Alliance Resources maxed out to Oklahoma Strong Leadership in 2016. Devon Energy, Koch Industries, Arch Coal, and ExxonMobil all contributed thousands to Scott Pruitt for Attorney General when he was last up for reelection during the 2014 cycle.

<sup>3</sup> Just last week we learned that a new 501(c)(4) organization, Protecting America Now, has formed specifically to support Mr. Pruitt's confirmation. This new dark money organization is promising anonymity to donors who contribute to its efforts on behalf of Mr. Pruitt. With so many fossil fuel interests having publicly supported Mr. Pruitt's political organizations in the past, it would come as little surprise if many of these same interests are now supporting his nomination anonymously.

Pruitt to disclose this information to EPA's Designated Agency Ethics Official during his tenure as Administrator, if confirmed?

For your information, attached to this letter is a letter we are sending today to EPA requesting additional information on its recusal and waiver process. The EPW Committee has scheduled Mr. Pruitt's confirmation hearing for January 18<sup>th</sup>. Accordingly, we respectfully request responses to these questions prior to the date of the hearing.

Sincerely,



Thomas R. Carper  
United States Senator



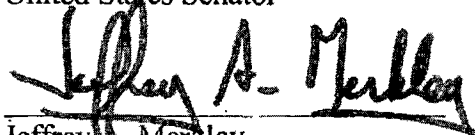
Sheldon Whitehouse  
United States Senator



Benjamin L. Cardin  
United States Senator



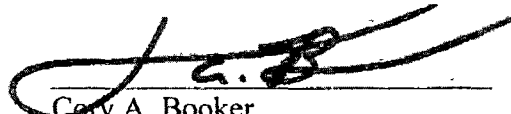
Bernard Sanders  
United States Senator




Jeffrey A. Merkley  
United States Senator



Kirsten Gillibrand  
United States Senator



Cory A. Booker  
United States Senator



Edward J. Markey  
United States Senator



Tammy Duckworth  
United States Senator

Enclosure: letter to Kevin Minoli, Designated Agency Ethics Official, U.S. Environmental Protection Agency



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

**JAN 16 2017**

OFFICE OF  
GENERAL COUNSEL

The Honorable Bernard Sanders  
United States Senate  
332 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senator Sanders:

This letter responds to your inquiry of January 12, 2017, requesting specific information regarding the ethics review of E. Scott Pruitt, who has been nominated by President-elect Trump to be the Administrator of the United States Environmental Protection Agency (EPA).

Pursuant to the Ethics in Government Act of 1978 (amended by the Ethics Reform Act of 1989 and the Honest Leadership and Open Government Act of 2007), the EPA ethics team reviewed the public financial disclosure report submitted by Mr. Pruitt. We interacted with his surrogates to ensure that he reported all information necessary and required as set forth in the Ethics in Government Act. See "Contents of Report" at 5 U.S.C. app. §102 and in 5 C.F.R. Part 2634, Subpart C. Based on his submission, the EPA certified the public financial disclosure report on January 4, 2017, and forwarded it to the Office of Government Ethics (OGE), which certified it later that same day. Our certification of the report means that "the individual submitting [it] is in compliance with applicable laws and regulations." See 5 U.S.C. app. §106. In addition to certifying the report, the EPA and OGE also approved the language of Mr. Pruitt's ethics agreement, which conformed to the requirements of 5 C.F.R. Part 2634, Subpart H, Ethics Agreements, and the OGE-issued Nominee Ethics Agreement Guide (2014).

Federal ethics laws and regulations define the assets that are to be considered when assessing whether an employee or nominee has a financial conflict of interest. This assessment considers Mr. Pruitt's direct or imputed assets, which are defined to be his own interests, those of his spouse, minor child, general partner, any organization or entity for whom he serves as officer, director, trustee, general partner or employee, or any person with whom he is negotiating for or has an arrangement concerning prospective employment. See 5 C.F.R. § 2640.103(d). An employee's obligation to recuse himself from a particular matter or obtain a waiver pursuant to 18 U.S.C. §208(b) is based upon consideration of these defined interests. Interests or potential interests beyond those included in the definition are not considered and, therefore, cannot form the basis of an obligation *under federal ethics laws* to recuse oneself. For example, your letter asks whether the EPA considered potential "conflicts of interest arising from [Mr. Pruitt's] solicitation of funds for 527 and 501(c)(4) organizations." The assets of a 527 organization are

not owned directly by Mr. Pruitt or any of his imputed interests, so are, therefore, outside of the bounds of our review. Although Mr. Pruitt himself had a campaign committee for his own political campaigns for office, the EPA received confirmation from his surrogates that he is neither compensated by nor can he direct funds to himself. Further, he is not liable for the campaign's debt and is not owed any money. Mr. Pruitt's surrogates, in an email message from Mr. Adam Raviv, Special Counsel, WilmerHale, dated December 22, 2016, assured the EPA that if confirmed, the "committee will not raise additional money during his service and its only activity will be to settle any liabilities remaining from before his confirmation." We note that, as a federal employee, Mr. Pruitt would be prohibited under the Hatch Act, 5 U.S.C. § 7324, from soliciting any funds whatsoever for any partisan political campaign, group or election.

QUESTION #1: Could you provide us a complete list of matters that in your opinion will require your authorization?<sup>1</sup>

ANSWER #1: Upon appointment, Mr. Pruitt will become an employee of the United States Environmental Protection Agency and subject to, among other things, the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, and the conflict of interest statutes codified in Title 18 of the United States Code. The obligation to seek authorization to participate in a specific party matter to avoid a loss of impartiality of the employee originates from 5 C.F.R. § 2635.502(a), which states:

Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.

The regulation, which includes a definitions section, specifies that an employee has a covered relationship with, among others, "[a]ny person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee." 5 C.F.R. § 2635.502(b)(iv). As set forth in the ethics agreement, Mr. Pruitt has identified that for a period of one year after his resignation from his position as the Attorney General of the State of Oklahoma, he will have a covered relationship with the State of Oklahoma and has agreed to seek authorization prior to participating in any specific party matter in which the State of Oklahoma is a party or represents a party. Similarly, he has identified the Southern Baptist Theological Seminary, Windows Ministry Incorporated, and the Rule of Law

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<sup>1</sup> This response differs from the long-standing agency practice of answering questions in a comprehensive narrative in light of the unique nature of the confirmation process and the importance of the federal ethics requirements to that process. In order to facilitate the approach taken, this response includes the wording of the questions contained in your letter verbatim.

Defense Fund as organizations with which he will have a covered relationship for one year from the date he resigns or resigned from his positions with those entities, and has agreed during the time he has a covered relationship with any organization to seek authorization prior to participating in any specific party matter in which any organization in which he has served as director or officer is a party or represents a party.

It is not possible to proactively identify a complete list of specific party matters that could exist across the entire agency that involve the State of Oklahoma or any of the three organizations, nor would it be possible to do so for many other employees who have covered relationships with a state or organization that the EPA interacts on a fairly regular basis. Instead, the employee ensures compliance with the ethics requirements by proactively identifying the persons with which the employee has a covered relationship and then seeking authorization each time the employee seeks to participate in a specific party matter where one of those persons is a party or represents a party.

QUESTION #2: What factors will you use to assess whether authorization will be granted? What factors will you use to determine how broadly any recusal, if required, must be drawn? For example, Mr. Pruitt has challenged EPA's carbon pollution standards for power plants. Assuming that a recusal would be required in that matter, would it be limited to decisions regarding the litigation, or to other matters considered by the Office and Air and Radiation?

ANSWER #2: For the purposes of the impartiality considerations under the Standards of Ethical Conduct, the factors the EPA's Designated Agency Ethics Official will take into consideration are set forth at 5 C.F.R. § 2635.502(d)(1) - (6):

Factors which may be taken into consideration include:

- (1) The nature of the relationship involved;
- (2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
- (3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) The sensitivity of the matter;
- (5) The difficulty of reassigning the matter to another employee; and
- (6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Should a recusal be necessary, that would prohibit participation in that specific party matter in any way, but a recusal in one specific party matter would not itself prevent participating on other specific party matters in which the "covered relationship" is a party or represents a party, or extend to matters of general applicability. Pursuant to the impartiality rules, any court case is considered a specific party matter. Thus, if the State of Oklahoma is a party or represents a party in a particular piece of litigation, Mr. Pruitt's ethics agreement includes a commitment by him to seek authorization to participate personally and substantially in that litigation. Should Mr. Pruitt

seek authorization to participate in any litigation in which a person with whom he has a covered relationship is a party or represents a party, as stated above, the EPA Designated Agency Ethics Official would consider the factors set forth at 5 C.F.R. § 2635.502(d)(1) - (6) for purposes of compliance with the federal ethics rules. Beyond the federal ethics requirements, as an attorney, Mr. Pruitt would also be subject to the rules of any relevant state bar. Those rules, however, are in addition to, and beyond the scope of, the federal ethics review and requirements discussed in this letter.

QUESTION #3: Mr. Pruitt has agreed to not participate in any particular matter involving the RLDF without prior authorization. RLDF's activities and donors are largely secret. Without more extensive disclosures about RLDF and Mr. Pruitt's role in it, how will you determine whether a particular matter involves the RLDF?

ANSWER #3: Federal ethics requirements apply first to the employee himself, and so Mr. Pruitt has agreed that, for the period of time for which he has a covered relationship with the Rule of Law Defense Fund (RLDF), he will seek authorization prior to participating in any specific party matter in which RLDF is a party or represents a party. Once he becomes a federal employee, Mr. Pruitt will have a continuing obligation to comply with the commitments made in his ethics agreement and the federal ethics requirements. In order to have an obligation to seek authorization to participate personally and substantially in a matter, RLDF must be a party or represent a party in a specific party matter. If RLDF has an interest in a specific party matter but is not itself a party or representing a party in that matter, the federal ethics requirements would not obligate Mr. Pruitt to seek authorization prior to participating in that specific party matter.

QUESTION #4: The ethics agreement entered into by former EPA Administrator Carol Browner included a clear and permanent recusal of her participation in any EPA matter in which the State of Florida was involved as a party and she was involved personally and substantially as Secretary of the Florida Department of Environmental Regulation. Our understanding of Mr. Pruitt's ethics agreement is that he has made no such unequivocal pledge. Why has EPA concluded that a more lenient arrangement for Mr. Pruitt's conflicts is appropriate?

ANSWER #4: In assisting Mr. Pruitt with his ethics agreement, the EPA followed federal ethics requirements and the most recent Ethics Agreement Guide published by the Office of Government Ethics (OGE) in 2014. Both the EPA and OGE certified Mr. Pruitt's ethics agreement as complying with all federal ethics requirements and conforming to the template set forth in OGE's Guide. Each ethics agreement is specific to the individual who is signing the agreement, and so consistency with the agreement of a former EPA Administrator is not a requirement for the agreement to be in compliance with the federal ethics rules. While the question indicated Mr. Pruitt's ethics agreement differs from the ethics agreement entered into by former Administrator Carol Browner in 1997, Mr. Pruitt's ethics agreement is very similar to the agreement entered into by former Administrator Lisa Jackson in 2009. Those comparisons do not demonstrate compliance or non-compliance with the federal ethics requirements.

QUESTION #5: Mr. Pruitt has agreed to seek your authorization for a one-year period of time. Is it your understanding that any recusal you may require of Mr. Pruitt would be limited to this one-year period? If so, how will you account for his participation in matters after that one-year period where the conflict still exists, like litigation that he has brought against the agency that has not settled or been decided by that time?

ANSWER #5: As explained above, the regulations define a person with whom an employee has a covered relationship to include "[a]ny person for whom the employee has, *within the last year*, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee." 5 C.F.R. § 2635.502(b)(iv) (*italics added*). After one year, the covered relationship with the former employer under the federal ethics rules no longer exists. At that point in time and into the future, there is no obligation under the federal ethics rules to seek authorization to participate in the relevant specific party matters, and any disqualification on participating in those specific party matters is no longer in effect. An employee may voluntarily continue to recuse himself from such specific party matters after that point, but is not obligated to do so by the federal ethics requirements. Again, this letter discusses only Mr. Pruitt's obligations under the federal ethics laws and does not address other possible obligations such as compliance with state bar rules.

QUESTION #6: Mr. Pruitt has sued EPA on behalf of the State of Oklahoma. Before authorizing him to participate in EPA decisions involving Oklahoma, how will you determine whether Mr. Pruitt has obtained consent from his client to be released from ethical obligations he may have to it?

ANSWER #6: The federal ethics requirements ensure employees meet certain obligations on behalf of the interests of the federal government, as those interests are articulated in federal laws and regulations. Likewise, the EPA's ethics program is focused on ensuring compliance with those laws and regulations. To the extent Mr. Pruitt has ethical obligations to the State of Oklahoma or any other organization, ensuring compliance with those non-federal obligations is beyond the scope of the federal ethics requirements and the EPA's ethics program.

QUESTION #7: Many of Mr. Pruitt's lawsuits have involved multi-state coalitions. Presumably he has entered into joint prosecution agreements with his co-plaintiffs. Have you reviewed, or will you review, these agreements to assess whether Mr. Pruitt has a "covered relationship" with other states or parties in those lawsuits? Is it your opinion that he would also have to obtain consent from his co-plaintiffs to participate in matters in which EPA's position is adverse to those states?

ANSWER #7: As described above, the federal ethics regulations define persons with whom an employee has a covered relationship, and the impartiality standards do not consider that joint prosecution agreements give rise to any covered relationship with co-plaintiffs. Joint prosecution agreements would not be relevant to evaluating compliance with federal ethics requirements and the EPA has not reviewed any such possible agreements.

QUESTION #8: It is a general principle of legal ethics that an attorney may not disclose privileged information without the client's consent. Furthermore, in multi-party litigation when two or more clients with a common interest in litigation agree to exchange otherwise privileged information concerning the matter, the communication is privileged as against third persons. Have any provisions been put in place to prevent the unauthorized disclosure by Mr. Pruitt of confidential client information, either from the State of Oklahoma or other state plaintiffs in Mr. Pruitt's litigation?

ANSWER #8: The federal ethics requirements ensure employees meet certain obligations on behalf of the interests of the federal government, as those interests are articulated in federal laws and regulations. Likewise, the EPA's ethics program is focused on ensuring compliance with those laws and regulations. To the extent Mr. Pruitt has ethical obligations to the State of Oklahoma or any other state or organization, knowledge of such provisions and ensuring compliance with those non-federal obligations is beyond the scope of the federal ethics requirements and the EPA's ethics program.

QUESTION #9: Pursuant to 42 U.S.C. § 7601(d) (sic), the authority of the Administrator to issue rules related to topics listed in 42 U.S.C. § 7607(d) is not delegable. How will you address a situation where you determine Mr. Pruitt has a conflict of interest with respect to a rule covering one of these topics?

ANSWER #9: Should the federal ethics requirements preclude an Administrator from participating in a matter where the authority to take certain actions is defined by a statute or a regulation to rest with the Administrator, and where the statute or regulation specifically states that the authority may not be delegated, the Federal Vacancies Reform Act and other federal law provide a mechanism for another official of the EPA to perform such functions in an acting capacity. For example, if an Administrator is determined to have a conflict of interest and must be recused with respect to any such non-delegable statutory function or duty, he would be deemed unable to perform the function or duty and the Administrator position would be deemed "vacant" with respect to that function or duty. The Federal Vacancies Reform Act identifies the officials who would serve as the acting Administrator to perform the function or duty, and under Executive Reorganization #3 of 1970, the EPA Deputy Administrator acts as Administrator in the event of a vacancy in the office of Administrator.

QUESTION #10: If a recusal is determined appropriate in any matter, has the nominee agreed to forgo any briefings during the period of the recusal?

ANSWER #10: An employee who is recused from participation cannot be briefed on the same particular matter from which he is recused. In its advisory entitled "Effective Screening Arrangements for Recusal Obligations, DO-04-012 (June 1, 2004), the Office of Government Ethics wrote that:

Ethics officials should also counsel employees regarding the scope of their recusals, including the kinds of actions that may constitute personal and substantial participation.

For example, employees with recusal obligations should not assign covered matters on an ad hoc basis. Participating in a decision concerning who should work on a matter, how a matter should be handled, or whether a matter should be acted upon, is a form of participation in the matter. Involvement in preliminary discussions, in interim evaluations, in review or approval at intermediate levels, or in supervision of subordinates working on a matter also amounts to personal and substantial participation. Recusal means no participation in any way, including briefings.

QUESTION #11: Under what obligation is Mr. Pruitt to follow determinations made by you concerning his recusals and waivers? If he chooses not to follow your determinations, what recourse is available for EPA?

ANSWER #11: Pursuant to the Ethics in Government Act at 5 U.S.C. app. §110, Mr. Pruitt is required to comply with his ethics agreement. Pursuant to 5 C.F.R. § 2634.802(b), he is required to comply with his ethics agreement within ninety days from the date of Senate confirmation. As an employee of the EPA, Mr. Pruitt will be subject to the Standards of Ethical Conduct set forth at 5 C.F.R. Part 2635, as well as the conflict of interest statutes codified in Title 18 of the United States Code, which include specific prohibitions against financial and representational conflict of interest.

As a Presidential nominee for a Senate-confirmed position, Mr. Pruitt is required to have one hour of initial ethics training which he may complete before or after his appointment, but not later than two months after his appointment. 5 C.F.R. § 2638.304(b)(1). In addition, he is required to have an ethics briefing to discuss his immediate ethics obligations. This new training requirement, which became effective on January 1, 2017, may be combined with the initial ethics training, but must occur no later than fifteen days after appointment. See 5 C.F.R. § 2638.305(b)(1). As an employee of the EPA, Mr. Pruitt will be subject to the Standards of Ethical Conduct for Employees of the Executive Branch, which includes the basic obligations of public service set forth at 5 C.F.R. § 2635.101(b)(1) – (12).

As the head of this agency, Mr. Pruitt will be “responsible for, and will exercise personal leadership in, establishing and maintaining an effective agency ethics program and fostering an ethical culture in the agency.” 5 C.F.R. § 2638.107. In the event that an employee fails to meet the obligations of his or her ethics agreement, then the EPA may notify the Office of the Inspector General and/or the Office of Government Ethics. See 5 C.F.R. § 2635.101(b)(11), which requires employees to disclose waste, fraud, abuse and corruption to the proper authorities, and 5 C.F.R. § 2638.401, which gives the Office of Government Ethics the authority to take action with respect to deficiencies in an agency’s ethics program.

In closing, thank you for your January 12, 2017, letter requesting specific information regarding the ethics review performed by the EPA with regard to the nomination of E. Scott Pruitt for the position of Administrator. The EPA recognizes the importance of the federal ethics requirements to the confirmation process, and is committed to working with the Congress, Mr. Pruitt, and future nominees to explain those requirements and how they apply to a particular situation.

Consistent with that commitment, Mr. Pruitt's representative requested a copy of the signed version of this response after it has been transmitted to you, and one will be provided to him.

If you have further questions, you may contact me at [minoli.kevin@epa.gov](mailto:minoli.kevin@epa.gov) or (202) 564-8064, or your staff may contact Justina Fugh, Senior Counsel for Ethics, at [fugh.justina@epa.gov](mailto:fugh.justina@epa.gov) or (202) 564-1786 and copy Christina Moody of the EPA's Office of Congressional and Intergovernmental Relations, [moody.christina@epa.gov](mailto:moody.christina@epa.gov) or (202) 564-0260.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K S Minoli'.

Kevin S. Minoli  
Designated Agency Ethics Official  
Principal Deputy General Counsel

# United States Senate

WASHINGTON, DC 20510

January 25, 2017

The Honorable Donald Trump  
President of the United States of America  
The White House  
1600 Pennsylvania Ave, NW  
Washington, DC 20500

Dear Mr. President:

We are gravely troubled by reports about the recent directive to all federal agencies to silence communications with the public and Members of Congress. The American people expect an open, transparent and honest government, and your actions are not only contrary to that expectation, they promote a long lasting culture of fear among federal employees and prevent them from following their mission to openly serve the American public. Additionally, these actions undermine trust in our Federal government and do little to support your “drain the swamp” pledge to “make the government honest again.”<sup>1</sup>

According to reports, your Administration’s Beach Team<sup>2</sup> has directed the Environmental Protection Agency (EPA) and the Departments of Transportation, Agriculture<sup>3</sup>, Health and Human Services and Interior with memos that impose a gag order on career federal employees. These memos instructed employees to, among other things, immediately cease releasing any public-facing documents, ban the release of photos and press releases to the public and terminate the use of social media. According to reports and an emailed memo, EPA employees were instructed to remove the website’s climate change page containing links to scientific research on global warming, and the Beach Team targeted lists of EPA employees with pending speaking engagements for review.<sup>4</sup> In addition, in some instances the Beach Team specifically directed employees not to send any correspondence to public officials, including Members of Congress and state and local officials.

As Members of Congress, we wanted to ensure that you are aware that it is against the law to interfere with federal employees communicating with Congress.<sup>5</sup> It is also against the law

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<sup>1</sup> <https://www.donaldjtrump.com/press-releases/trump-pledges-to-drain-the-swamp>

<sup>2</sup> Politico Pro. Trump restricts communications from health agencies. January 24, 2017

<https://www.apnews.com/55d484c19c28463e95c3b7c674d20bab> [https://www.buzzfeed.com/dinograndoni/trump-usda?utm\\_term=.jk05K5jPAB#.dcalxlbPg5](https://www.buzzfeed.com/dinograndoni/trump-usda?utm_term=.jk05K5jPAB#.dcalxlbPg5)

[http://www.reuters.com/article/us-usa-trump-epa-climatechange-idUSKBN15906G?feedType=RSS&feedName=domesticNews&utm\\_medium=Social&utm\\_source=Twitter](http://www.reuters.com/article/us-usa-trump-epa-climatechange-idUSKBN15906G?feedType=RSS&feedName=domesticNews&utm_medium=Social&utm_source=Twitter)

<sup>3</sup> Reports have since stated that the Department of Agriculture has rescinded the gag order:

<http://thehill.com/homenews/administration/316015-agriculture-department-lifts-order-for-lockdown-on-its-research-arm>

<sup>4</sup> <https://www.politicopro.com/f/?id=00000159-d107-dc1f-a37d-d95fed210001>

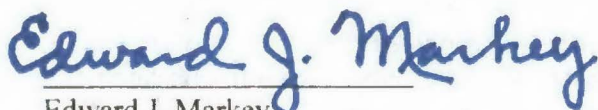
<sup>5</sup> 5 U.S.C. § 7211 and 18 U.S.C. § 1505

to retaliate against career federal officials for following lawful policy directives.<sup>6</sup> These recent actions, combined with your previous attempts as President-elect to solicit names of Energy Department employees who worked on climate change initiatives and State Department officials who worked on women's and gender issues are deeply troubling.

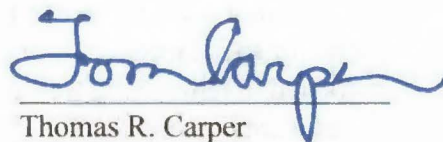
The agencies targeted by this latest directive are responsible for billions of dollars of taxpayer funded public research. This research helps find solutions to problems that affect Americans every day. Targeting the scientists at these agencies and prohibiting them from sharing the results of this research with the broader public is irresponsible and serves only to undermine the integrity and public trust in the federal government. Furthermore, these actions, particularly at the EPA, fly in the face of the Agency's current scientific integrity policy,<sup>7</sup> which prohibits scientists, managers and other Agency leadership from suppressing, altering or otherwise impeding the timely release of scientific findings or conclusions. Previous Republican and Democratic administrations have protected the free flow of information and the sharing of agencies' views with the public.

Given your commitment to the rule of law and peaceful transition of power, we respectfully ask that any directives are immediately reversed and that you ensure that the dedicated federal civil servants of this country receive the respect they deserve and are immediately made aware of their clear protections under the law.

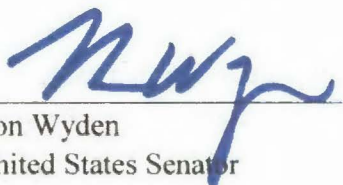
Sincerely,



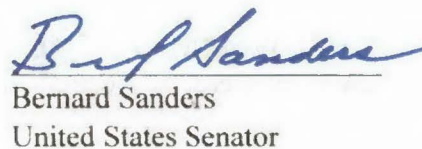
Edward J. Markey  
United States Senator



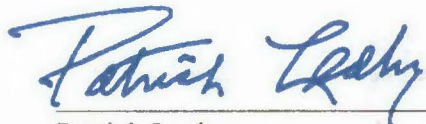
Thomas R. Carper  
United States Senator



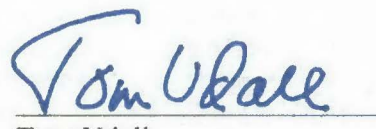
Ron Wyden  
United States Senator



Bernard Sanders  
United States Senator



Patrick Leahy  
United States Senator



Tom Udall  
United States Senator

<sup>6</sup> 5 U.S.C. § 2302(b)(8)

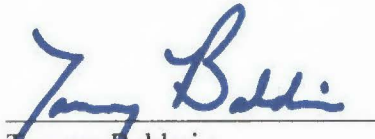
<sup>7</sup> [https://www.epa.gov/sites/production/files/2014-02/documents/scientific\\_integrity\\_policy\\_2012.pdf](https://www.epa.gov/sites/production/files/2014-02/documents/scientific_integrity_policy_2012.pdf)



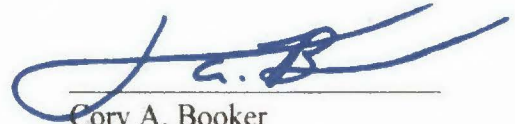
Richard Blumenthal  
United States Senator



Elizabeth Warren  
United States Senator



Tammy Baldwin  
United States Senator



Cory A. Booker  
United States Senator



Maria Cantwell  
United States Senator



Kirsten Gillibrand  
United States Senator

# United States Senate

WASHINGTON, DC 20510

January 26, 2017

President Donald J. Trump  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. President:

We write with alarm that the Environmental Protection Agency (EPA) has suspended all of its grants and contracts, which provide vital resources dedicated to air and water quality monitoring and improvement, the remediation of sites contaminated by toxic materials, and a variety of other activities that keep Americans and their families healthy and safe. We urge you to immediately reverse this troubling action.

Time and time again, you have promised Americans that you would keep their air clean and their water safe. In November 2015, you called into MSNBC's Morning Joe and said, "I want to make sure we have clean air and clean water." Last May, when you presented your "America First Energy Plan" in North Dakota, you told Americans that "from an environmental standpoint, my priorities are very simple: clean air and clean water." And your White House website declares: "President Trump will refocus the EPA on its essential mission of protecting our air and water."

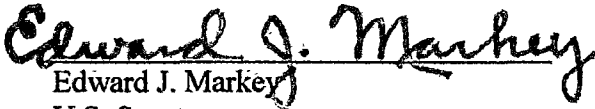
The suspension of EPA's grants and contracts does the exact opposite of your stated intention—it puts the air Americans breathe and the water we drink at risk. EPA's grants and contracts support billions of dollars' worth of research and development funding, clean-up of toxic Superfund sites, local air and water quality monitoring and testing, assessments of risks to human health from environmental hazards, measures to enhance water security, radioactive and hazardous waste removal, radiation protection, and containment assessments for underground fuel storage tanks. Moreover, if this suspension applies to existing contracts, re-starting them could prove to be an exceedingly expensive waste of taxpayer funds.


We additionally note that EPA awards most grants on a competitive basis, which must remain merit-based and free from political influence. This action seems likely to result in the opposite outcome. We urge you to immediately lift the suspension that was placed on the EPA's grants and contracts. We also ask for your prompt responses to the following requests for information:

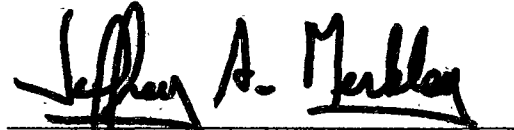
- 1) Please provide a copy of the document that directed this suspension.
- 2) Please provide a list of all grants, contracts and other awards that have been suspended under this directive, including the date, recipient and amount of the grant, contract or other award. Some press reports have indicated that this suspension may be temporary; please also indicate which grants, contracts and other awards are expected to be suspended indefinitely, and when funding for the rest will be reinstated.


- 3) For any existing contract that has been suspended, please provide an estimate of the costs associated with re-starting it, as well as the legal basis for its suspension.
- 4) Please direct the EPA to provide us with a copy of any and all documents related to the decision to suspend contracts, grants and other awards (including any and all written or electronic correspondence, audiotapes, electronic records, videotapes, photographs, telephone messages, voice mail messages, e-mails, facsimiles, daily agendas and calendars, information about meetings and/or discussions, whether in-person or over the telephone, agendas, minutes and a list of participants for those meetings and/or discussions, and transcripts and notes of any such meetings and/or discussions).
- 5) Who approved this action, both within EPA and at the White House?


Sincerely,

  
Edward J. Markey  
U.S. Senator

  
Thomas R. Carper  
U.S. Senator

  
Jeffrey A. Merkley  
U.S. Senator

  
Kirsten Gillibrand  
U.S. Senator

  
Bernard Sanders  
U.S. Senator

Cc: Acting Administrator Catherine McCabe

JOHN BARRASSO, WYOMING, CHAIRMAN

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## United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RICHARD M. FUSSELL, MAJORITY STAFF DIRECTOR  
GABRIELLE BALDWIN, MINORITY STAFF DIRECTOR

March 17, 2017

The Honorable Scott Pruitt  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Washington, DC 20004

Dear Administrator Pruitt:

Recent reporting and long-delayed disclosure of emails and documents from your time as the Oklahoma Attorney General show that you were not fully forthcoming and truthful with the Committee in advance of your confirmation. As members of the Environment and Public Works Committee, we respectfully request that you provide clarification by answering several questions and make specific commitments to promote transparency and accountability at the EPA as preceding Administrators have done before you. Our concerns and requests are described below, and we ask that you respond to us by April 7, 2017.

### **1. Correcting the Record Regarding Your Use of Personal Email Address to Conduct Official Business**

In response to questions from Senator Whitehouse about your personal email address and use of it for official business, you stated three separate times that you only used your official Oklahoma Attorney General email address to conduct official business. Yet an examination of the documents the Oklahoma Attorney General's Office released to the *New York Times*, Fox 25 in Oklahoma, and the Center for Media and Democracy (CMD) reveal several instances in which your personal email address was used for official business. Fox 25 also received confirmation from the Oklahoma Attorney General's Office that you used your personal email address for official business and released a video showing documents proving you both received and sent official emails via your personal email address.

**Request:** Based on this new information, we request that you correct the record, and provide an answer to one of the email-related questions posed to you during your confirmation process: "Have you ever conducted business using your personal email accounts, non-official Oklahoma Attorney General email accounts, text messages, instant messenger, voicemails, or any other medium? If yes, please provide all business-related emails, texts, from those mediums and any others used you used to conduct official business while Attorney General of Oklahoma."

Additionally, upon review of the documents responsive to the previously mentioned Open Records Act requests, the extent of your personal email use and whether your personal email accounts were adequately searched to respond to those requests remains unclear.

Moreover, the use of a personal email address to conduct official business could violate the Presidential and Federal Records Act Amendments of 2014.

**Request:** Please respond to the following questions:

- Were your personal email accounts searched for emails and documents that were responsive to the recently-released partial production of documents related to CMD's Open Records Act request? If so, how many responsive documents were found and how many were released?
- Dozens of Oklahoma Open Records Act requests, including nine from CMD, are currently pending before the Oklahoma Attorney General's Office, including some for text messages. Do you commit to allowing the Oklahoma Attorney General's Office to search your personal email account(s) and phone(s) for responsive documents?
- Have you retained all official emails and texts you sent and received on your personal email accounts and phones while Attorney General of Oklahoma?
- Since January 20, 2017, have you or any political appointees at EPA used non-official electronic messaging accounts, including email addresses, personal phones, and any encrypted messaging applications (e.g., Confide, Signal, Whisper) to send or receive official messages? If so, have complete copies of those records been forwarded to the corresponding official accounts within the 20 days after the creation or transmission of the record, as required by the Presidential and Federal Records Act Amendments of 2014?
- What steps are you taking to ensure you and all political appointees at EPA comply with the Presidential and Federal Records Act Amendments of 2014?
- In a question for the record following your confirmation hearing, Senator Whitehouse asked you to notify the Committee of all of the email addresses you plan to use in your role as EPA Administrator, including aliases or pseudonyms, which you agreed to do. The Committee has not yet received this information, and we request that you promptly provide it.

**2. Affirm and Comply with the EPA Policy Regarding the Use of Personal Email Accounts**

As you may know, during the confirmation process of your predecessor, Regina A. McCarthy, then Ranking Member David Vitter requested that the agency "issue new guidance ... that outlines ... standards and procedures to ensure that all official business is conducted solely on official government email accounts ..." In response, then Acting Administrator Robert Perciasepe put into place CIO 2155.3, "Records Management Policy." The policy provides for full compliance by EPA and its personnel with records management and access requirements, and includes detailed implementation procedures and requirements for agency officials, management, staff and contractors.

**Request:** We ask that you commit to maintain the Records Management Policy and its rigorous implementation. We also ask that you direct staff to follow the spirit and intent of the policy as well as its express requirements, and that you ensure that devices, such as PIN-protected email or document transmission or other encryption applications not be

used by political appointees. In addition, in light of your own failure to respond truthfully to Senator Whitehouse's question, we ask that you affirm in writing your commitment to never use any personal email account to conduct professional business for the entirety of your tenure at EPA.

### **3. Release of Your Calendar**

During your confirmation process, Senator Carper asked you to "list all public speeches or presentations you have made that included references to any issue related to energy or the environment since 1998, and please provide copies (written, audio, or video) of any such speeches or presentations." In your responses to the Committee<sup>1</sup>, you provided a list of such events, but an examination of the documents the Oklahoma Attorney General released to the Center for Media and Democracy indicate that the material you provided the Committee was incomplete. For example, the list you provided does not include: a June 27, 2014 breakfast panel sponsored by the Americans for Prosperity; a July 15, 2014 Four Star Leadership event; an August 4, 2014 telephonic briefing entitled "States Push Back: Curbing EPA's Power Grab"; and a May 20, 2014 discussion entitled "Scott Pruitt Presents 'The Oklahoma Attorney General's Plan: The Clean Air Act Section 111(d) Framework that Preserves States' Rights'" that was sponsored by the Federalist Society and held at the National Press Club. The Oklahoma Attorney General has not yet agreed to release all of the documents requested by the Center for Media and Democracy and additional discrepancies between the events you told the Committee you participated in and what you appear to have actually done may yet be revealed.

Moreover, an examination of the documents that were released by the Oklahoma Attorney General demonstrate a disturbing pattern of coordination with the oil and gas sector as you planned your efforts to oppose EPA's regulations. For example, the American Fuel & Petrochemical Manufacturers, which opposed EPA's Renewable Fuel Standard (RFS) Program and ozone regulations, provided you with suggested language for an Oklahoma AG-authored petition, noting in 2013 that "this argument is more credible coming from a State." Later that year, you filed letters in opposition to both the RFS and ozone limits. In 2013, Devon Energy organized a meeting between your office, Leonard Leo of the Federalist Society and coal industry lawyer Paul Seby to plan the creation of a "clearinghouse" that would "assist AGs in addressing federalism issues." Melissa Houston, your then chief of staff, emailed Devon Energy saying "this will be an amazing resource for the AGs and for industry."

**Request:** The combination of your failure to disclose all of your speaking engagements to the Committee and your record of close coordination with the oil and gas sector raise concerns about whether such coordination will continue in your current role as EPA Administrator. So that we may better perform our oversight roles, we request that at the end of each month, you provide the Committee with a copy of your calendar that lists all meetings, calls, and events in which you participated, and the participants and subject of each such meeting, call, or event. We note that former Administrator McCarthy routinely released copies of her calendar under Freedom of Information Act requests,<sup>2</sup> and former

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<sup>1</sup> [https://www.epw.senate.gov/public/\\_cache/files/daf68bcb-f572-4a90-b0bb-6da7c4790603/scott-pruitt-qfr-supplemental-materials-01.18.2017.pdf](https://www.epw.senate.gov/public/_cache/files/daf68bcb-f572-4a90-b0bb-6da7c4790603/scott-pruitt-qfr-supplemental-materials-01.18.2017.pdf)

<sup>2</sup> <http://www.eenews.net/stories/1060022093>

Administrator Jackson made her own, and other EPA appointees' calendars, publicly available each day.<sup>3</sup>

#### **4. Address Concerns about Secrecy Associated with Transition and Other Political Appointees**

A February 24, 2017 article in E&E News titled "Trump team kept some transition members secret" described a "broader 'action team' responsible for producing an 'action plan' for the agency whose members were never publicly disclosed." One of these members was reportedly Steve Milloy, who lists himself as the author of "Scare Pollution: Why and How to Fix the EPA," as well as a member of the Trump EPA transition team on his twitter biography.<sup>4</sup> According to the article, one of his lawsuits against the EPA "likened tests exposing people to diesel engine particulate emissions to medical experiments performed in Nazi concentration camps." His name does not appear on the official transition team list<sup>5</sup> for the agency. Other reports of personnel working on the EPA transition team raise conflicts of interest questions. For example, David Schnare, who is listed on the official transition team, is still identified as the General Counsel on the website of the E&E Legal Institute, which has sued the agency on both the Clean Power Plan and Waters of the United States rule (which is currently being weakened at the recent direction of the President).

According to the Office of Government Ethics (OGE) regulations,<sup>6</sup> there are several categories of employee who are subject to public financial disclosure requirements, including "Employees in positions which are excepted from the competitive service because of their confidential or policy-making character, unless the position has been excluded from the public financial disclosure requirements by the Director of the Office of Government Ethics."

Moreover, even if an employee is excluded from having to file public financial disclosures, OGE rules state that new entrant reports are required to be submitted by "An individual who has assumed the duties of a position for which public financial disclosure is required ("covered position"), unless the individual is expected to serve no more than 60 days in any single calendar year or unless the individual is transferring from one covered position to another without a break in service of more than 30 days." The Designated Agency Ethics Official (DAEO) would be expected to work to address any conflicts of interest that were revealed in those reports.

**Request:** We request that you provide the Committee with the following materials, along with monthly updates to these materials, until all political appointments to non-confirmed positions at EPA have been made:

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<sup>3</sup> [https://www.epa.gov/sites/production/files/2014-02/documents/transparency\\_in\\_epas\\_operations.pdf](https://www.epa.gov/sites/production/files/2014-02/documents/transparency_in_epas_operations.pdf)

<sup>4</sup> <https://twitter.com/JunkScience>

<sup>5</sup> <https://greatagain.gov/agency-landing-teams-54916f71f462#.cjq5vn69r>

<sup>6</sup> <https://www.oge.gov/Web/278eGuide.nsf/2cf9ac792bc0654a85257ea1005f838a/b03cd8fb3320588b85257f4500740471?OpenDocument> and <https://www.oge.gov/Web/278eGuide.nsf/Content/Definitions-Officers-and-Employees-Subject-to-Public-Financial-Disclosure>

- A list of all individuals who have at any time served on the Trump EPA transition and/or beach-head teams, including members of the "broader action team" referenced in the E&E News article, along with their affiliation(s) prior to their appointments.
- For each individual who has served or expects to serve as a member of the EPA transition and/or beach-head teams for longer than 60 days, including individuals who are serving as consultants, contractors or experts, a copy of the new entrant report that was filed with the DAEO, any conflicts analysis that was prepared for the individual, and documentation detailing any recusals or other measures designed to mitigate such conflicts. If no such report, analysis or documentation was prepared, please explain why not.
- A list of all individuals who are serving in, or plan to serve in, non-confirmed political appointments at the EPA, along with their affiliation(s) prior to their appointments.
- For each individual who is currently serving in a non-confirmed political appointment, please provide a copy of the new entrant report that was filed with the DAEO, any conflicts analysis that was prepared for the individual, and documentation detailing any recusals or other measures designed to mitigate such conflicts. If no such report, analysis or documentation was prepared, please explain why not.

**5. Commit to Transparent and Timely Review of Freedom of Information Act (FOIA) Requests**

While you were Attorney General of Oklahoma, your office accumulated a significant backlog of Open Records Act requests from the media and public, and in some cases it took your office over two years to produce responsive documents.

**Request:** To ensure the EPA is responding to FOIA requests in a transparent and timely manner, we ask that you provide the Committee with a list of open FOIA requests submitted to EPA (and the date on which each was submitted) at the end of each month.

We very much appreciate your prompt attention to this matter. Thank you for your consideration of our requests. If you have any questions about these requests, please feel free to contact Michal Freedhoff at the Committee on Environment and Public Works at 202 224 8832.

Sincerely,



Tom Carper  
U.S. Senator



Bernard Sanders  
U.S. Senator



Sheldon Whitehouse  
U.S. Senator



Edward J. Markey  
U.S. Senator



Tammy Duckworth  
U.S. Senator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

May 5, 2017

The Honorable John Barrasso  
Chairman  
Committee on Environment  
and Public Works  
United States Senate  
Washington, D.C. 20510

The Honorable Tom Carper  
Ranking Member  
Committee on Environment  
and Public Works  
United States Senate  
Washington, D.C. 20510

Dear Chairman Barrasso, Ranking Member Carper,

I appreciate the opportunity to respond to a March 17, 2017 letter, to the U.S. Environmental Protection Agency, relating to use of personal messaging systems consistent with the requirements of the Federal Records Act and the Freedom of Information Act (FOIA). EPA's Records Policy applies equally to all staff, including the Administrator. I, of course, support the Agency's policy as it provides the foundation for the Agency's adherence to the Federal Records Act. I intend to continue the Agency's commitment to responsible federal records management, and to ensure that EPA's Records policy is updated as necessary.

The EPA Records Policy strongly discourages the use of non-official messaging systems by all Agency employees. If such use occurs, all employees have a short period of time by which they must send the record to their official EPA email account, consistent with the requirements of the Federal Records Act. At the EPA, all incoming political appointees are also required to take specific records training soon after they arrive at the Agency. The training addresses employee responsibilities under the Federal Records Act, email records management and related tools, text messaging records and mobile device management, the Freedom of Information Act, and agency policy concerning the use of non-governmental email accounts to conduct agency business, among other topics. As you may be aware, EPA's Office of Inspector General (OIG) is investigating allegations referenced in a February 14, 2017, letter from the House Committee on Science, Space, and Technology to the OIG. The matter relates to allegations of use of an encrypted messaging application by EPA career staff. It would not be appropriate to comment on an open OIG matter at this time, however EPA is also in communication with the National Archives and Records Administration, and takes this matter seriously.

The letter asks for information relating to my personal email account and requests that I correct the record regarding my response to a question asking whether I "conducted business" using that account. My response to that question stated that I used my official, state-provided email accounts and government-issued phones to conduct business. This response was based on the best

information available at the time and having only four days to complete approximately 1,100 written questions and subparts.

In response to the letter and to put to rest any other questions concerning this matter, a complete and exhaustive review of my personal email account was undertaken. Based on this exhaustive review, I have determined that a small portion of those emails may relate to state business as that term is understood either generically or under Oklahoma's Open Records Act. However, because I am no longer the Oklahoma Attorney General, I am in no position to make that determination. With this in mind, and although not required to do so, I have made *all* of my personal emails available to the Oklahoma Attorney General's office, including those that have no possible connection to state business, for review in responding to pending Open Records Act requests. To date, as has been reported, that office's review has not identified as responsive to Open Records Act requests any documents from my personal email account that were not already captured by the official Oklahoma Attorney General accounts.

I believe my original response to Senator Whitehouse's question for the record number 115 was and remains correct. But to prevent any possible confusion, I supplement my original response as follows:

115. Have you ever conducted business using your personal email accounts, nonofficial Oklahoma Attorney General email accounts, text messages, instant messenger, voicemails, or any other medium? If yes, please provide all business-related emails, texts, from those mediums and any others you've used to conduct official business.

My practice is to conduct official business through official channels, including my state-provided email accounts. Under Oklahoma law, political matters must be transacted using personal email accounts. That includes emails concerning political matters that may arguably also touch on state business. Importantly, the Oklahoma Open Records Act makes no distinction between a state devices and personal devices for purposes of ensuring transparency of "conducting business." Elected officials oftentimes utilize a personal device so as to ensure that no state property is used to conduct political business, which is legally prohibited.

I make my best efforts to ensure that communications related to state business are copied or otherwise provided to official state systems. It is my understanding that the Attorney General's office will continue to search through the entirety of my personal email account as they work through the pending Open Records Act requests—including the more than 90 requests regarding my confirmation alone—to ensure any responsive and non-privileged records are provided. However, because I am no longer Attorney General, the office of the Oklahoma Attorney General must make the determination as to what, if any, communications constitute official business.

The letter also asked for information regarding the use of official Agency email accounts. The Agency maintains a primary email account to contact me, [pruitt.scott@epa.gov](mailto:pruitt.scott@epa.gov). EPA staff

have also established secondary accounts in the Agency's Outlook email system that are used for calendaring, scheduling, and internal communications. My staff is currently considering the best means to provide the public with the important information regarding my day-to-day activities and meetings on behalf of the Agency.

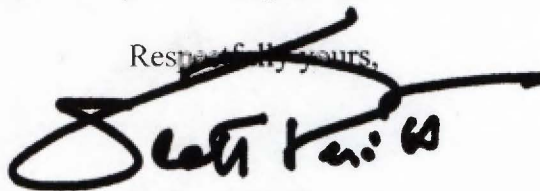
The letter also asked about the process the Agency follows to address public financial disclosure requirements. Pursuant to the Ethics In Government Act, 5 U.S.C. app, certain executive branch officials are required to file public financial disclosure reports (OGE-278). The Office of Government Ethics (OGE) established government-wide regulations that dictate who should file such reports and provide specific guidance about the release of such documents to the public. *See, e.g.,* 5 CFR § 2634.202 and § 2634.603. To request a public financial disclosure report, please fill out the OGE Form 201, provide the name(s) of the people whose reports you seek, and submit your request to EPA's ethics office at [ethics@epa.gov](mailto:ethics@epa.gov).

In addition, the letter asked about individuals serving at EPA in various capacities. A routinely updated directory of all current EPA staff is available on the Agency's website.

Finally, the letter also expressed an interest in a monthly report of open FOIA requests pending with EPA. Information concerning all FOIA requests filed with the Agency, including the date the request was filed and the request status, are available at any time through EPA's FOIA Online tracking system, at <https://foiaonline.regulations.gov/foia/action/public/search>.

Again, thank you for the opportunity to respond. If you have further questions, please contact me or your staff may contact Troy Lyons in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-4987 or [Lyons.Troy@epa.gov](mailto:Lyons.Troy@epa.gov).

Respectfully yours,

A handwritten signature in black ink, appearing to read "E. Scott Pruitt", with a large, sweeping flourish extending from the end of the signature.

E. Scott Pruitt

cc:

Senator James M. Inhofe  
Senator Shelley Moore Capito  
Senator John Boozman  
Senator Roger Wicker  
Senator Deb Fischer  
Senator Jerry Moran  
Senator Mike Rounds  
Senator Joni Ernst  
Senator Dan Sullivan  
Senator Richard C. Shelby

Senator Benjamin L. Cardin  
Senator Bernard Sanders  
Senator Sheldon Whitehouse  
Senator Jeff Merkley  
Senator Kirsten Gillibrand  
Senator Cory Booker  
Senator Edward J. Markey  
Senator Tammy Duckworth  
Senator Kamala Harris

# United States Senate

WASHINGTON, DC 20510

September 13, 2017

The Honorable Scott Pruitt  
Administrator  
U.S. Environmental Protection Agency  
Office of the Administrator  
Mail Code 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Mr. Douglas W. Lamont  
Deputy Assistant Secretary of the Army  
Office of the Assistant Secretary of the Army for Civil Works  
Department of the Army  
108 Army Pentagon  
Washington, DC 20310

Dear Administrator Pruitt and Deputy Assistant Secretary Lamont:

We write in strong opposition to your proposed rule to weaken safeguards for the Nation's waterways. The proposed rule to repeal the 2015 Clean Water Rule upends the many years the EPA and US Army Corps of Engineers have taken to draft a rule that gave our constituents—and the cities, counties, states and businesses in which they live and work—the certainty that they need. As members of the United States Senate, we have a strong institutional interest in protecting Congress' original intent to protect important water bodies throughout the United States when it passed the Clean Water Act.

As we celebrate 45 years of the Clean Water Act this year, we recognize the enormous progress the nation has made in improving water quality, but realize that achieving the law's core objective—"to restore and maintain the chemical, physical, and biological integrity of the Nation's waters"—will take continued vigilance. That is why we reject your efforts to make it harder for our country's vital water bodies to meet that objective.

The 2015 Clean Water Rule was created to clear up longstanding confusion over which water bodies are protected by the Clean Water Act. The agencies took a pragmatic approach to more clearly define which water bodies get guaranteed coverage under the Clean Water Act and which ones are exempt through using the most up-to-date science and grounding the rule's safeguards on widely-accepted legal standards.

The water bodies at the center of the Clean Water Rule serve critical functions, from providing drinking water to filtering out pollution and replenishing groundwater. The 2015 rule recognizes the necessity of protecting our Nation's small streams, wetlands, and other critical waters,

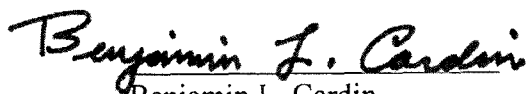
including streams that feed into the drinking water sources of 117 million Americans. Protecting these waters also directly benefits iconic bodies of water like Puget Sound, the Mississippi River, the Great Lakes, and the Chesapeake Bay. These waters support our communities, hunters and anglers, and water-dependent businesses like breweries and outdoor recreation. Because of these impacts, the agencies found that the public benefits of the rule would be as high as \$572 million per year and would significantly outweigh the rule's compliance costs.

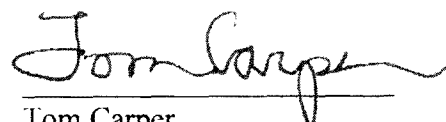
The agencies took years to develop the Clean Water Rule, notably including a scientific review that relied on over 1,200 peer-reviewed publications. The science confirms the significant relationship that tributaries, wetlands, and other waters have with the larger bodies of water into which they feed. The agencies also conducted a significant stakeholder engagement process that resulted in over 400 meetings and more than one million comments, approximately 87 percent of which supported the rule.

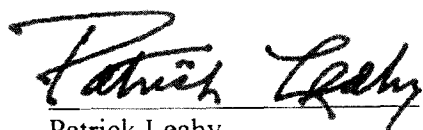
After years of uncertainty—created in large part by the conflicting *Riverside*, *SWANCC*, and *Rapanos* Supreme Court decisions—our constituents finally had a definition driven by science and not by the courts. In fact, as you note, President Trump, in his Executive Order on February 28, 2017, wrote, “[i]t is in the national interest to ensure that the Nation’s navigable waters are kept free of pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard to the roles of the Congress and the States under the Constitution.” For an administration to change the definition of what constitutes a water of the United States almost immediately upon entering office creates more, not less, regulatory uncertainty. We need stability and certainty for our constituents to be safe and our economy to grow.

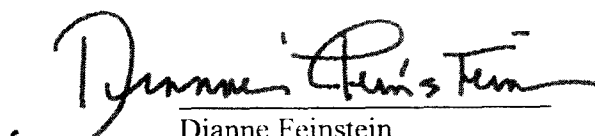
Now more than ever, it is clear that too many communities have to worry about access to clean, safe water. Vigorously implementing the Clean Water Act helps protect clean drinking water for everyone. We therefore urge your agencies to immediately withdraw the misguided proposal to repeal the 2015 Clean Water Rule.

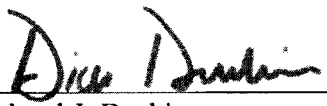
Respectfully submitted,

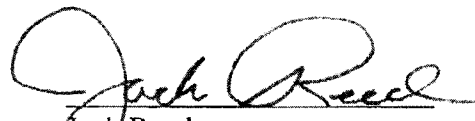
  
Benjamin L. Cardin  
United States Senator

  
Tom Carper  
United States Senator


  
Patrick Leahy  
United States Senator

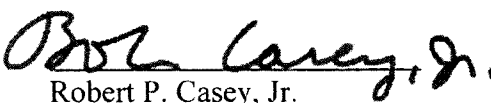
  
Dianne Feinstein  
United States Senator


  
Richard J. Durbin  
United States Senator


  
Jack Reed  
United States Senator

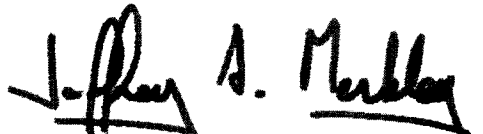
  
Robert Menendez  
United States Senator

  
Bernard Sanders  
United States Senator


  
Robert P. Casey, Jr.  
United States Senator


  
Sheldon Whitehouse  
United States Senator

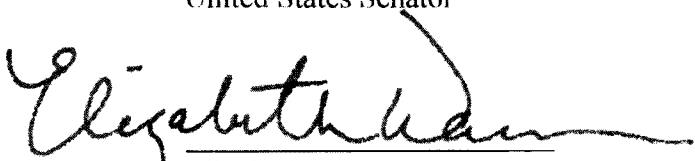
  
Jeanne Shaheen  
United States Senator

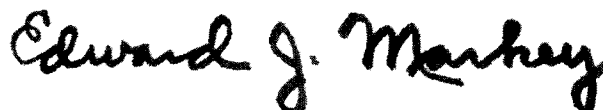
  
Jeffrey A. Merkley  
United States Senator


  
Kirsten Gillibrand  
United States Senator

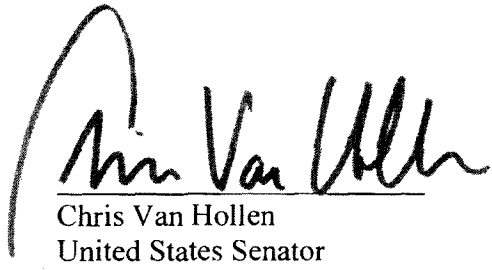
  
Richard Blumenthal  
United States Senator

  
Martin Heinrich  
United States Senator

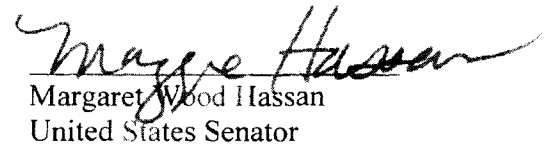
  
Elizabeth Warren  
United States Senator

  
Edward J. Markey  
United States Senator

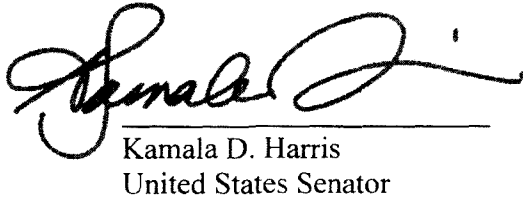
  
Cory A. Booker  
United States Senator



Chris Van Hollen  
United States Senator



Margaret Wood Hassan  
United States Senator



Kamala D. Harris  
United States Senator



NOV 01 2017



The Honorable Bernard Sanders  
United States Senate  
Washington, D.C. 20510

Dear Senator Sanders:

Thank you for your September 13, 2017, letter to the U.S. Environmental Protection Agency (EPA) and the U.S. Department of the Army (Army) providing comments on the proposed rule "Definition of 'Waters of the United States' —Recodification of Pre-existing Rules." The proposed rule would rescind the 2015 Clean Water Rule and re-codify the agencies' regulatory text that existed prior to the 2015 regulation defining "waters of the United States."

The proposed rule initiates the first step in a comprehensive, two-step process intended to review and revise the definition of "waters of the United States" consistent with Executive Order 13778 "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule," dated February 28, 2017. The focus of the step 1 proposal is to withdraw the 2015 Clean Water Rule and replace it with regulations that the agencies have implemented since 1986, as implemented via agency guidance documents. This action will re-establish procedures for identifying waters covered by the Clean Water Act that have been in place for over 30 years. Our goal is to provide continuity and certainty for regulated entities, the States, agency staff, and the regulated public. In Step 2, the agencies will pursue notice-and-comment rulemaking as part of a substantive reevaluation of the definition of "waters of the United States."

We appreciate the comments you provided on the EPA and Army proposed rule. We will include your letter in the official docket for the proposed rule, identified by Docket ID EPA-HQ-OW-2017-0203 at <http://www.regulations.gov>. We will carefully consider your comments and all comments received on the proposed rule when deciding what changes to make to the final rule.

If you have further questions, please contact me or your staff may contact Denis Borum in EPA's Office of Congressional and Intergovernmental Relations at [borum.denis@epa.gov](mailto:borum.denis@epa.gov) or at (202) 564-4836, or Cindy Barger in the Office of the Assistant Secretary of the Army (Civil Works) at [cindy.s.barger.civ@mail.mil](mailto:cindy.s.barger.civ@mail.mil) or at (202) 761-0041.

Respectfully yours,

A handwritten signature in black ink, reading "Michael H. Shapiro".

Michael H. Shapiro  
Acting Assistant Administrator  
Office of Water  
Environmental Protection Agency

A handwritten signature in black ink, reading "Douglas W. Lamont".

Douglas W. Lamont, P.E.  
Senior Official Performing  
the Duties of the Assistant Secretary  
of the Army (Civil Works)

# United States Senate

WASHINGTON, DC 20510

October 24, 2017

Michael Dourson, Ph.D.  
Adviser to the Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue NW, 1101A  
Washington, D.C. 20460

Dear Dr. Dourson:

It has come to our attention that you have recently been appointed to the position of “adviser to the administrator” at the Environmental Protection Agency (EPA) while your nomination to serve as EPA’s Assistant Administrator of the Office of Chemical Safety and Pollution Prevention (OCSPP AA) is under consideration by the Senate. This appointment raises several concerns that we request you address before a Floor vote on your nomination, assuming the Environment and Public Works Committee agrees to advance it.

## **Your Appointment as Adviser to the Administrator**

The Federal Vacancies Reform Act of 1998 provides, with limited exceptions, the “exclusive means for temporarily authorizing an acting official to perform the functions and duties of any office of an Executive agency ... for which appointment is required to be made by the President, by and with the advice and consent of the Senate....” 5 U.S.C. § 3347. Further, as the Supreme Court held in *Buckley v. Valeo*, “any appointee exercising significant authority pursuant to the laws of the United States is an ‘Officer of the United States,’ and must, therefore, be appointed in the manner prescribed” in Article II, Section 2, clause 2 of the Constitution. 424 U.S. 1, 126 (1976). Accordingly, it would be unlawful for you to assume any of the delegated authorities of the OCSPP AA before the Senate confirms your nomination while serving as “adviser to the administrator.”

Your appointment creates the appearance, and perhaps the effect, of circumventing the Senate’s constitutional advice and consent responsibility for the position to which you have been nominated. Your improper involvement in EPA decisions could provide grounds for subjects of EPA regulations and oversight to challenge the legal validity of those decisions in court.<sup>1</sup> To ensure your appointment is not violating the Federal Vacancies Reform Act of 1998, please respond to the following:

- What is your official job title and type of appointment (e.g., non-career SES, Schedule C, administratively-determined)? Who, if anyone, are you supervising? What is your

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<sup>1</sup> See, e.g., *National Labor Relations Board v. SW General*, 137 S. Ct. 929 (2017) (vacating an NLRB unfair labor practices complaint because the NLRB general counsel at the time had been appointed in violation of the Federal Vacancies Reform Act).

relationship with the Acting OCSPP AA? If you have a written job description, please provide a copy.

- Has the Administrator formally delegated any duties of the OCSPP AA to you? Which, if any, OCSPP AA duties have you or are you presently performing?
- During your confirmation process, you entered into an ethics agreement that was approved by both EPA and the Office of Government Ethics and presented to the Senate Environment and Public Works Committee. Are you governed by the same ethics agreement in your current position? Please provide a copy of the signed Trump ethics pledge, and copies of any waivers to the pledge or recusal statements.
- You committed to notifying the Committee of all of your EPA email addresses "within seven days of using a new email address, including any aliases or pseudonyms." Please provide all email addresses you have used since starting at EPA and any new ones within seven days of their use.
- You also committed to "conducting all business using official email addresses or other means and to refrain from any mediums that are outside the Freedom of Information Act's reach." Do you commit to do the same pre-confirmation?
- During previous administrations, senior EPA managers' schedules have been available to the public on a daily basis. You also committed to "mak[ing your] calendar available on a timely basis" when asked if you would make your calendars available daily. Given your extensive work with industries regulated by EPA in the past, how do you define "timely," and if you are unwilling to commit to making your schedule available on a daily basis, why? Will you make your schedule available while in your current position? If so, how frequently?
- In your ethics letter to Kevin Minoli, EPA's designated agency ethics official, you stated upon confirmation you would resign from your positions with the University of Cincinnati, Toxicology Education Foundation, and Dourson, Dourson, and Fowler. Have you resigned from these positions upon accepting your current appointment as adviser to the administrator? If so, please provide copies of the written notification you committed to send Mr. Minoli upon terminating these positions. Have you, as promised in your ethics letter, refrained from "participat[ing] personally or substantially in any particular matter" involving these entities, or those with which you have a personal, financial, or professional interest, including North American Flame Retardant Alliance, Martha C. Dourson, LLC, and CreateSpace Independent Publishing Platform? Please also provide a list of all particular matters from which you have either been recused or for which you have requested waivers in order to continue your participation in.

#### **Frank R. Lautenberg Chemical Safety for the 21st Century Act and Pollutants**

You declined to answer several questions for the record from members of the Environment and Public Works Committee due to lack of familiarity with various issues or EPA's perspective on them as a nominee. We are particularly concerned about your incomplete answers to questions about the regulation of pollutants and chemicals, as well as implementation of the Frank R.

Lautenberg Chemical Safety for the 21st Century Act, a broadly bipartisan bill that will be within your purview if confirmed. It has been widely reported that Nancy Beck, previously of the American Chemistry Council, has been working behind the scenes to undermine the protections Congress intended in this law.<sup>2</sup> Your prior association with the tobacco industry and your extensive work for the American Chemistry Council and other chemical manufacturers led *The New York Times* to deem you a “scientist for hire”<sup>3</sup> and accordingly raises similar concerns.

Now that you are “adviser to the administrator,” we expect that you have familiarized yourself with these issues and can be more forthright in answering the questions we previously asked. For example:

- Of seven questions asked by Senator Carper related to specific chemicals and how EPA should protect people from exposures to chemicals when setting chemical safety standards, you provided only five partial responses. You did not provide all requested information in response to two questions submitted by Senator Carper that were related to funding sources and sponsors of work on specific chemicals that was performed by TERA. You also refused to answer any of Senator Carper’s eight questions related to implementation of the Toxic Substances Control Act.
- In response to three questions asked by Senator Whitehouse about EPA’s role regulating mercury and mercury compounds under TSCA, you responded that you were unaware of the status of the agency’s work. You declined to respond to Senator Whitehouse’s question if you agreed with EPA’s endangerment finding and instead indicated you are “not familiar with the details of EPA’s endangerment finding and would need to do more research on the topic.” You also declined to answer a question from Senator Whitehouse regarding how EPA should consider the synergistic effects of chemicals when considering their approval under FIFRA.
- During repeated questioning by Senator Harris regarding your ethical and moral responsibility to recuse yourself from working on potential conflicts of interest, such as regulations pertaining to the chemical compound perchlorate, you repeatedly indicated that you would defer to the guidance of the EPA Ethics Office. In your responses, you declined to acknowledge that you possess the ability to proactively recuse yourself from such conflicts.
- In response to three questions asked by Senator Cardin about EPA’s role regulating trichloroethylene, methylene chloride, and N-Methylpyrrolidone under TSCA, you responded that you were unaware of the status of the agency’s work.

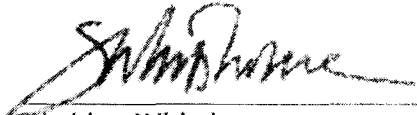
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<sup>2</sup> Annie Snider and Alex Guillen, *EPA staffers, Trump Official Clashed over New Chemical Rules*, POLITICO, June 22, 2017, available online at: <http://www.politico.com/story/2017/06/22/trump-epa-energy-chemicals-clash-239875>.


<sup>3</sup> *Mr. Trump Outdoes Himself in Picking a Conflicted Regulator*, THE NEW YORK TIMES, Oct. 18, 2017, available online at: <https://www.nytimes.com/2017/10/17/opinion/mr-trump-outdoes-himself-in-picking-a-conflicted-regulator.html>.


We request you provide more complete answers to the attached questions for the record on toxics and pollutants, informed by your current position at EPA. We look forward to your prompt responses as it will help inform how we engage with your nomination.

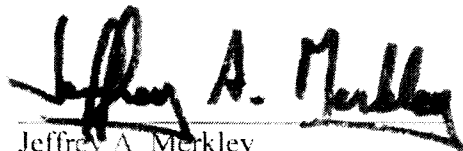
Sincerely,

  
Sheldon Whitehouse  
United States Senator


  
Thomas R. Carper  
United States Senator


  
Benjamin L. Cardin  
United States Senator

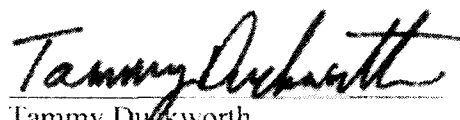
  
Bernard Sanders  
United States Senator

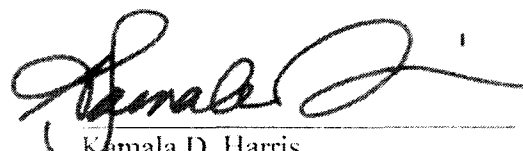
  
Jeffrey A. Merkley  
United States Senator

  
Kirsten Gillibrand  
United States Senator

  
Cory A. Booker  
United States Senator

  
Edward J. Markey  
United States Senator

  
Tammy Duckworth  
United States Senator

  
Kamala D. Harris  
United States Senator

## **Inadequate Responses to QFRs from EPW Members**

*Senator Carper*

Available online at: [https://www.epw.senate.gov/public/\\_cache/files/f/0/f0729f1a-4385-453f-b7f8-442825a0721c/A681AA266D5CC024C98FCC85A944EB5E.senator-carper-questions-for-the-record-to-epa-nominees.pdf](https://www.epw.senate.gov/public/_cache/files/f/0/f0729f1a-4385-453f-b7f8-442825a0721c/A681AA266D5CC024C98FCC85A944EB5E.senator-carper-questions-for-the-record-to-epa-nominees.pdf)

*Senator Whitehouse*

1. Pursuant to the overhauled TSCA, EPA recently published its first inventory of mercury supply, use, and trade in the U.S., which have very little information because it did not benefit from the new reporting requirements. TSCA requires that EPA promulgate a mercury and mercury compound reporting rule by June 22, 2018 to assist in preparation of the inventory, the next one of which is required to be published by April 1, 2020.
  - a. Do you commit to completing the mercury and mercury compounds reporting rule by the June 22, 2018 deadline?

**I do not know the status of this rulemaking within the Agency. However, if confirmed I will work to make sure that the TSCA deadline for this rule can be met.**

- b. Do you commit to identifying any manufacturing processes or products that intentionally add mercury or mercury compounds and recommend actions to achieve further reductions in such mercury use in the next inventory and publish that inventory by the April 1, 2020 deadline?

**As noted above, I do not know the status of these activities within the Agency. If confirmed, I will work to understand their status and to ensure that EPA is meeting the deadlines required by the Lautenberg amendments to TSCA.**

2. Mercury was on the 2012 Workplan Chemical List, but was removed from the list in 2014 because EPA already knew how highly toxic mercury is, and the Agency indicated it would be undertaking activities to implement the Minamata Convention on Mercury anyway. Significantly, this action was taken well before the revised TSCA was enacted. Under the revised law, to facilitate meeting its Convention obligations to reduce mercury use in the production of switches and switches, the phase down of mercury use in polyurethane production, and to regulate mercury use in new products and processes, it may be necessary for EPA to identify mercury among the next round of chemicals prioritized for action under TSCA. Will you include mercury among the next round of chemicals prioritized for action under TSCA as needed to further reduce mercury use in products and processes, and meet our obligations under the Minamata Convention?

**I am not familiar with why mercury was removed from the 2014 workplan list. If confirmed, I will look into this and seek to ensure that EPA is taking necessary steps to further reduce mercury use in products and processes.**

3. How should the EPA consider the synergistic effects of chemicals when considering approval of these chemicals under FIFRA?

**I am not familiar with how synergistic effects are evaluated currently in the pesticides program. If confirmed, I will seek to understand this to ensure that EPA's approach is appropriate.**

4. In 2009, as mandated by the Supreme Court and backed by a robust scientific and technical review, the Environmental Protection Agency produced the Endangerment and Cause or Contribute Findings for Greenhouse Gases (GHGs) under Section 202(a) of the Clean Air Act. It found six greenhouse gases - carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride - "taken in combination endanger both the public health and the public welfare of current and future generations." Do you agree with the EPA's endangerment finding? Why or why not?

**I am not familiar with the details of EPA's endangerment finding and would need to do more research on the topic before answering this question.**

*Senator Murkey*

5. One of the most significant changes made to TSCA under the LCSA was the streamlined authority for EPA to require testing of chemicals by order. However, to our knowledge that authority has not yet been used in the 15 months since the law took effect.

Given the importance of testing to fill data gaps, which is critical to both prioritization and risk evaluation -- and fundamental to a "risk-based" system, please tell us your plans for using the section 4 testing authority and approach for filling data gaps for both prioritization and risk evaluation."

**If confirmed, I will seek to better understand the Section 4 testing authority under TSCA. With this knowledge, I will work to ensure that it is appropriately used to help fill gaps for prioritization and risk evaluation.**

6. The new law requires EPA to restrict new chemicals where the available data are insufficient to address their risks. How will you evaluate the adequacy of data in PMNs? What will you do to assure that new chemicals are adequately tested?

**I will use a weight of the evidence approach that considers all scientific evidence and information to evaluate PMNs.**

7. The industry has pressured EPA to accelerate the completion of the review period for PMNs in order to reduce the PMN backlog. What steps will you take to assure that EPA does not sacrifice the rigor and thoroughness of the review process in return for speed?

**If confirmed, I will work closely with staff to completely understand the PMN review process to ensure its rigor and thoroughness.**

8. EPA staff has pointed to several ways industry can improve the efficiency of the review process by filing more robust PMNs that anticipate and respond to the likely concerns of EPA reviewers. What will you do to motivate industry to file more complete and accurate PMNs?

**If confirmed, I will work closely with staff to completely understand the PMN process. It seems to me that if industry had a better understanding of the EPA evaluation approach, it should incentivize them to provide more complete and accurate PMN submissions.**

*Senator Duckworth*

9. The Environmental Protection Agency (EPA) has said that exposure to cancer-causing chemicals in childhood can be as much as ten times as likely to lead to cancer than the same exposure to the same chemical in an adult. EPA has specific policies in place to account for these differences when it sets safety standards for chemicals.

You have questioned these policies claiming in your papers that, "by about 6 months of age, children are usually not more sensitive to chemical toxicity than adults" and "we are not aware of reported cases of differential harm to infants or children from low levels of regulated chemicals, like pesticides or food additives." This research was funded by the American Chemistry Council and Croplife America.

If you are confirmed, do you commit to apply, and not to weaken, EPA's current policies that account for the greater sensitivity and risk children may have from chemical exposures?

**If confirmed, I will apply EPA policies and guidance as they are appropriate and consistent with today's best available scientific evidence.**

*Senator Cardin*

10. Before the end of the last Administration, EPA proposed to ban some uses of three dangerous chemicals using its new Toxic Substances Control Act authority. Trichloroethylene is a probable carcinogen that has been found in unsafe levels in household wells on Maryland's Eastern Shore. Accidental exposures to methylene chloride used in paint and furniture strippers has killed at least 56 people since 1980, including at least two Maryland residents. Exposure to a second chemical used in paint strippers, N-Methylpyrrolidone, is dangerous for pregnant women. If you are confirmed, do you commit to quickly finalize these rules and prohibit the uses of these chemicals?

**If confirmed I commit to quickly getting briefed on the status of these rules so that I can better understand them and the prohibitions proposed.**

# United States Senate

WASHINGTON, DC 20510

December 6, 2017

The Honorable Scott Pruitt  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Pruitt:

We write to express our concern about your decision to re-open EPA's midterm evaluation for the light-duty vehicle emissions rule for MY 2022-2025. We also object strenuously to revisiting the standards set for 2021, which were never supposed to be a part of the mid-term evaluation. The agency has used the best-available science, in consultation with other federal and state agencies and the auto industry, to conclude that these emissions standards are feasible and achievable. We therefore urge you to not weaken the emissions standards for model years 2021 and 2022 through 2025.

As a part of this mid-term evaluation, EPA, NHTSA, and the California Air Resources Board released a joint Technical Assessment Report (TAR) in 2016, which was based on years of analysis, tear down studies, and engine mapping. The report included significant stakeholder input, both from industry and NGOs. The TAR showed that the automakers have the technical ability to meet the existing MY 2022-2025 standards by relying mostly on incremental improvements to conventional vehicle technologies. The TAR also found that these standards were cost-effective and would provide significant benefits to consumers. Using the robust analysis in the TAR as well as stakeholder input on the TAR, EPA released a proposed determination that the MY 2022-2025 standards are appropriate. In concluding that no changes to the standard were necessary, EPA also reaffirmed that the rule provides significant public health and climate benefits.

In February, however, shortly after you were confirmed as Administrator, the Alliance of Automobile Manufacturers, which represents 12 automakers including GM, Ford, Toyota and Volvo, sent you a letter asking that you re-open the mid-term evaluation and you granted their request. The mission of the EPA is to protect human health and the environment. Regulated industries should not be able to undermine technically sound standards that have clear environmental and health benefits.


Since these standards first began to be implemented the U.S. auto industry has added 700,000 jobs and had all-time record for sales in both 2015 and 2016. Additionally, independent analysis done by the non-profit organization Ceres, which represents investors and businesses, found that these fuel economy emissions standards provide automakers and their suppliers the certainty they need to add investment toward advanced technologies like electric vehicles and more efficient technologies. Ceres also found that the rule is needed for the long-term health of the industry. Also, earlier this year, the International Council on Clean Transportation released a technology assessment report that found that in some scenarios the technology costs to meet the MY2025 standard is 30% to 40% lower than what EPA and NHTSA projected. The public has benefitted

as well – consumers have saved over \$42 billion at the pump and mitigated 195 million metric tons of global warming emissions, according to the EPA.

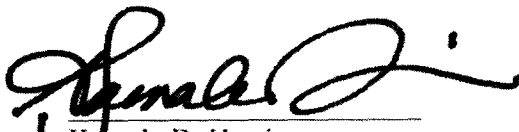
We urge you not to weaken these vehicle emissions standards, and allow the auto industry to ensure its continued success and further its innovation while maintaining a standard that brings clear public health, climate, and consumer benefits. As you move to reevaluate the sound technical conclusions your agency reached last year in the mid-term evaluation, we expect you will consider the facts, the science, and the law, which all lead to the single conclusion that the standards are achievable.


We will be monitoring this review process and look forward to working with you on this issue.


Sincerely,

  
Edward J. Markey  
U.S. Senator


  
Sheldon Whitehouse  
U.S. Senator

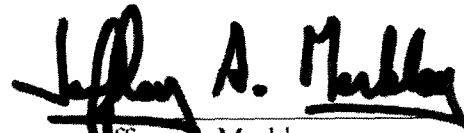
  
Kamala D. Harris  
U.S. Senator

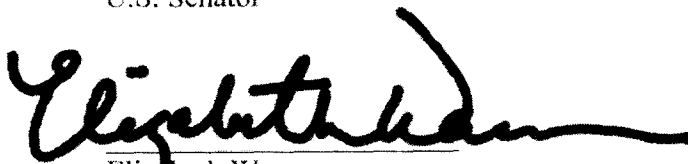
  
Chris Van Hollen  
U.S. Senator

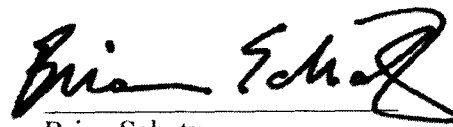
  
Al Franken  
U.S. Senator

  
Margaret Wood Hassan  
U.S. Senator

  
Ron Wyden  
U.S. Senator

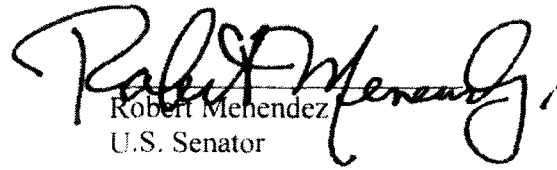
  
Jeffrey A. Merkley  
U.S. Senator

  
Elizabeth Warren  
U.S. Senator

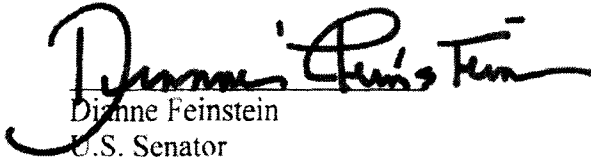
  
Brian Schatz  
U.S. Senator



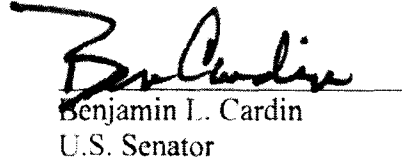
Maria Cantwell  
U.S. Senator



Robert Menendez  
U.S. Senator



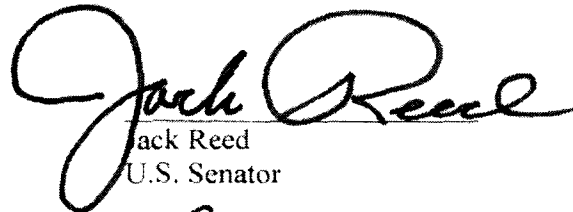
Dianne Feinstein  
U.S. Senator



Benjamin L. Cardin  
U.S. Senator



Tom Udall  
U.S. Senator



Jack Reed  
U.S. Senator



Richard Blumenthal  
U.S. Senator



Bill Nelson  
U.S. Senator



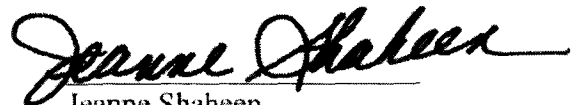
Richard J. Durbin  
U.S. Senator



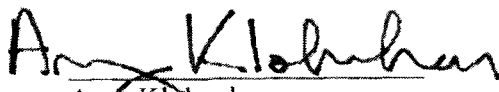
Kirsten Gillibrand  
U.S. Senator



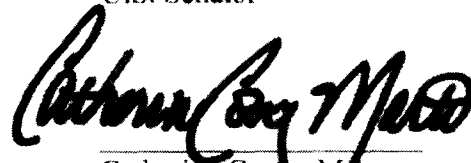
Bernard Sanders  
U.S. Senator



Jeanne Shaheen  
U.S. Senator



Amy Klobuchar  
U.S. Senator



Catherine Cortez Masto  
U.S. Senator

Cc: The Honorable Elaine L. Chao, Secretary, U.S. Department of Transportation



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

January 29, 2018

OFFICE OF  
AIR AND RADIATION

The Honorable Bernard Sanders  
United States Senate  
Washington, D.C. 20510

Dear Senator Sanders:

Thank you for your letter of December 6, 2017, to U.S. Environmental Protection Agency regarding the re-opening of EPA's Midterm Evaluation (MTE) for light-duty vehicle greenhouse gas emission standards, model years 2022-2025.

As you are aware, EPA is reconsidering whether the light-duty vehicle greenhouse gas standards established for model years 2022-2025 are appropriate under section 202(a) of the Clean Air Act. The Agency believes that it is important to ensure that stakeholders have the opportunity to provide data and analysis relevant to the MTE, and to that end EPA published a request for comment on the re-opening of the MTE in the Federal Register on August 21, 2017. The comment period for that notice closed on October 5, 2017, and EPA staff are currently in the process of reviewing and assessing the thousands of comments and accompanying analysis that stakeholders and the general public submitted.

We will take all comments received—including the thoughts provided in your letter—under consideration as we move forward with the MTE process. We have added your letter to the docket, where it will be part of the public record. We understand the significance of the MTE process to multiple stakeholders, including auto manufacturers, parts suppliers, consumers and the general public, and appreciate your input on this important policy matter.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Karen Thundiyil in the EPA's Office of Congressional and Intergovernmental Relations at [thundiyil.karen@epa.gov](mailto:thundiyil.karen@epa.gov) or (202) 564-1142.

Sincerely

A handwritten signature in dark ink, appearing to read "W L Wehrum", is positioned above the typed name.

William L. Wehrum  
Assistant Administrator

# United States Senate

WASHINGTON, DC 20510

July 23, 2018

W. Charles McIntosh  
Special Counsel to the Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Mr. McIntosh:

It has come to our attention that you have recently been appointed to the position of “special counsel to the Administrator” at the Environmental Protection Agency (EPA). This appointment was made while your nomination to serve as EPA’s Assistant Administrator for the Office of International and Tribal Affairs (OITA) remains under consideration by the Senate. This appointment raises several concerns that we request you address.

The Federal Vacancies Reform Act of 1998 provides, with limited exceptions, the “exclusive means for temporarily authorizing an acting official to perform the functions and duties of any office of an Executive agency ... for which appointment is required to be made by the President, by and with the advice and consent of the Senate....” 5 U.S.C. § 3347. Further, as the Supreme Court held in *Buckley v. Valeo*, “any appointee exercising significant authority pursuant to the laws of the United States is an ‘Officer of the United States,’ and must, therefore, be appointed in the manner prescribed” in Article II, Section 2, clause 2 of the Constitution. 424 U.S. 1, 126 (1976). Accordingly, it would be unlawful for you to assume any of the delegated authorities of the OITA AA prior to the Senate’s confirmation of your nomination.

Your appointment runs the serious risk of circumventing the Senate’s constitutional advice and consent responsibility for the position to which you have been nominated. Your involvement in certain EPA decisions could provide grounds for subjects of EPA regulations and oversight to challenge the legal validity of those decisions in court.<sup>1</sup> To ensure your appointment complies with the requirements of the Federal Vacancies Reform Act of 1998, please respond to the following:

- What is your official job title and type of appointment (e.g., non-career SES, Schedule C, administratively-determined)? Who, if anyone, are you supervising? What is your relationship with the Acting OITA AA? If you have a written job description, please provide a copy.
- Have any duties with the OITA AA been formally delegated to you by the Administrator? Which, if any, OITA AA duties are you presently performing?
- During your confirmation process, you entered into an ethics agreement dated April 14, 2018, that was approved by both EPA and the Office of Government Ethics and presented to the Senate Environment and Public Works Committee. Are you governed

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<sup>1</sup> See, e.g., *National Labor Relations Board v. SW General*, 137 S. Ct. 929 (2017) (vacating an NLRB unfair labor practices complaint because the NLRB general counsel at the time had been appointed in violation of the Federal Vacancies Reform Act).

by the same ethics agreement in your current position? If not, what steps will you be taking to avoid actual or apparent conflicts of interest while your nomination remains pending in the Senate?

- Please provide a copy of your signed Trump ethics pledge, and copies of any waivers to the pledge or recusal statements you signed.
- Do you commit to conducting all business using official email addresses or other official means and to refrain from any mediums that are outside the Freedom of Information Act's reach? Please provide all email addresses you have used since starting at EPA and any new ones within seven days of their use.
- In many of your responses to questions for the record, which were submitted after you began work at EPA, you noted your lack of familiarity with the subject matter and a commitment to seek more information following confirmation. Please provide substantive responses to questions 13, 16, 17, 18, 19, 20, 21, 24, 25, 37, 38 and 39.

We look forward to your prompt responses as it will help inform how we engage with your nomination.


Sincerely,



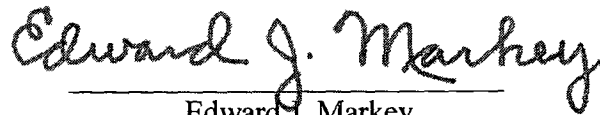
Thomas R. Carper  
United States Senator



Sheldon Whitehouse  
United States Senator



Bernard Sanders  
United States Senator



Edward J. Markey  
United States Senator



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

WASHINGTON, D.C. 20460

August 28, 2018

The Honorable Bernard Sanders  
332 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senator Sanders:

Thank you for your letter dated July 23, 2018. As you know, I joined the Environmental Protection Agency (EPA) on July 9, 2018, as a Special Counsel to the Acting Administrator while I await confirmation for the position of Assistant Administrator for the Office of Land and Emergency Management (OLEM).

Please be assured that I am very sensitive to the prerogatives of the Senate and the requirements of the Federal Vacancies Reform Act. My position is a Non-Career Senior Executive Service Limited Term position, and I do not serve as the Acting Assistant Administrator. My position is not supervisory, and I do not have any delegated authority. I am not occupying the physical office of the Assistant Administrator for Land and Emergency Management, and am not carrying out the functions or authorities of any assistant administrator.

I have consulted and met with career ethics officials to ensure that I fully understand my ethical obligations. As required by 5 C.F.R. § 2634.304, I have already completed my initial ethics training for new employees. This session was conducted in person by the Alternate Designated Agency Ethics Official, who provided specific advice about the limitations applicable to my current situation.

I meet regularly with the Principal Deputy Assistant Administrator who is the Acting Assistant Administrator of OLEM. Neither the Acting Administrator, nor the Acting Assistant Administrator of OLEM or anyone else has formally delegated any duties to me.

I am enclosing a copy of my signed ethics agreement, my Trump ethics pledge and recusal statement that makes clear that I am not permitted to work on any Superfund sites at which DowDuPont is a party or represents a party. I have not sought nor intend to seek any waivers under the Trump Ethics Pledge or the financial conflict of interest statutes. My EPA email address is [wright.peter@epa.gov](mailto:wright.peter@epa.gov), and that is the only EPA email address that I have. I have been and will continue to communicate regarding work-related matters using my EPA email exclusively. I do not expect to use any different email addresses, but if I do, I will provide such other address to you.

Should I be confirmed for the position of Assistant Administrator for the Office of Land and Emergency Management, I look forward to working with you and your staff on any issues that may arise.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter Wright', written over a horizontal line.

Peter Wright

Senior Counsel to the Acting Administrator

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

August 28, 2018

The Honorable Sheldon Whitehouse  
530 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Whitehouse:

Thank you for your letter dated July 23, 2018. As you know, I joined the Environmental Protection Agency (EPA) on July 9, 2018, as a Special Counsel to the Acting Administrator while I await confirmation for the position of Assistant Administrator for the Office of Land and Emergency Management (OLEM).

Please be assured that I am very sensitive to the prerogatives of the Senate and the requirements of the Federal Vacancies Reform Act. My position is a Non-Career Senior Executive Service Limited Term position, and I do not serve as the Acting Assistant Administrator. My position is not supervisory, and I do not have any delegated authority. I am not occupying the physical office of the Assistant Administrator for Land and Emergency Management, and am not carrying out the functions or authorities of any assistant administrator.

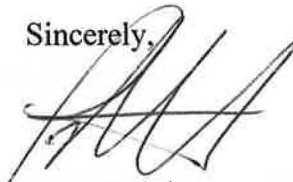
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I am enclosing a copy of my signed ethics agreement, my Trump ethics pledge and recusal statement that makes clear that I am not permitted to work on any Superfund sites at which DowDuPont is a party or represents a party. I have not sought nor intend to seek any waivers under the Trump Ethics Pledge or the financial conflict of interest statutes. My EPA email address is [wright.peter@epa.gov](mailto:wright.peter@epa.gov), and that is the only EPA email address that I have. I have been and will continue to communicate regarding work-related matters using my EPA email exclusively I do not expect to use any different email addresses, but if I do, I will provide such other address to you.

Should I be confirmed for the position of Assistant Administrator for the Office of Land and Emergency Management, I look forward to working with you and your staff on any issues that may arise.

Sincerely,

A handwritten signature in black ink, appearing to be 'P. Wright', written over a horizontal line.

Peter Wright

Senior Counsel to the Acting Administrator

Enclosures

# United States Senate

WASHINGTON, DC 20510

July 23, 2018

W. Charles McIntosh  
Special Counsel to the Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Mr. McIntosh:

It has come to our attention that you have recently been appointed to the position of “special counsel to the Administrator” at the Environmental Protection Agency (EPA). This appointment was made while your nomination to serve as EPA’s Assistant Administrator for the Office of International and Tribal Affairs (OITA) remains under consideration by the Senate. This appointment raises several concerns that we request you address.

The Federal Vacancies Reform Act of 1998 provides, with limited exceptions, the “exclusive means for temporarily authorizing an acting official to perform the functions and duties of any office of an Executive agency ... for which appointment is required to be made by the President, by and with the advice and consent of the Senate....” 5 U.S.C. § 3347. Further, as the Supreme Court held in *Buckley v. Valeo*, “any appointee exercising significant authority pursuant to the laws of the United States is an ‘Officer of the United States,’ and must, therefore, be appointed in the manner prescribed” in Article II, Section 2, clause 2 of the Constitution. 424 U.S. 1, 126 (1976). Accordingly, it would be unlawful for you to assume any of the delegated authorities of the OITA AA prior to the Senate’s confirmation of your nomination.

Your appointment runs the serious risk of circumventing the Senate’s constitutional advice and consent responsibility for the position to which you have been nominated. Your involvement in certain EPA decisions could provide grounds for subjects of EPA regulations and oversight to challenge the legal validity of those decisions in court.<sup>1</sup> To ensure your appointment complies with the requirements of the Federal Vacancies Reform Act of 1998, please respond to the following:

- What is your official job title and type of appointment (e.g., non-career SES, Schedule C, administratively-determined)? Who, if anyone, are you supervising? What is your relationship with the Acting OITA AA? If you have a written job description, please provide a copy.
- Have any duties with the OITA AA been formally delegated to you by the Administrator? Which, if any, OITA AA duties are you presently performing?
- During your confirmation process, you entered into an ethics agreement dated April 14, 2018, that was approved by both EPA and the Office of Government Ethics and presented to the Senate Environment and Public Works Committee. Are you governed

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<sup>1</sup> See, e.g., *National Labor Relations Board v. SW General*, 137 S. Ct. 929 (2017) (vacating an NLRB unfair labor practices complaint because the NLRB general counsel at the time had been appointed in violation of the Federal Vacancies Reform Act).

by the same ethics agreement in your current position? If not, what steps will you be taking to avoid actual or apparent conflicts of interest while your nomination remains pending in the Senate?

- Please provide a copy of your signed Trump ethics pledge, and copies of any waivers to the pledge or recusal statements you signed.
- Do you commit to conducting all business using official email addresses or other official means and to refrain from any mediums that are outside the Freedom of Information Act's reach? Please provide all email addresses you have used since starting at EPA and any new ones within seven days of their use.
- In many of your responses to questions for the record, which were submitted after you began work at EPA, you noted your lack of familiarity with the subject matter and a commitment to seek more information following confirmation. Please provide substantive responses to questions 13, 16, 17, 18, 19, 20, 21, 24, 25, 37, 38 and 39.

We look forward to your prompt responses as it will help inform how we engage with your nomination.


Sincerely,



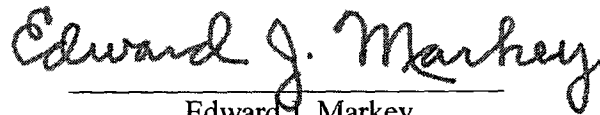
Thomas R. Carper  
United States Senator



Sheldon Whitehouse  
United States Senator



Bernard Sanders  
United States Senator



Edward J. Markey  
United States Senator



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

WASHINGTON, D.C. 20460

August 28, 2018

The Honorable Bernard Sanders  
332 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senator Sanders:

Thank you for your letter dated July 23, 2018. As you know, I joined the Environmental Protection Agency (EPA) on July 9, 2018, as a Special Counsel to the Acting Administrator while I await confirmation for the position of Assistant Administrator for the Office of Land and Emergency Management (OLEM).

Please be assured that I am very sensitive to the prerogatives of the Senate and the requirements of the Federal Vacancies Reform Act. My position is a Non-Career Senior Executive Service Limited Term position, and I do not serve as the Acting Assistant Administrator. My position is not supervisory, and I do not have any delegated authority. I am not occupying the physical office of the Assistant Administrator for Land and Emergency Management, and am not carrying out the functions or authorities of any assistant administrator.

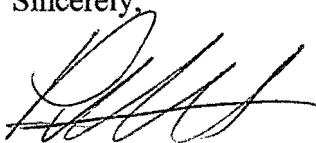
I have consulted and met with career ethics officials to ensure that I fully understand my ethical obligations. As required by 5 C.F.R. § 2634.304, I have already completed my initial ethics training for new employees. This session was conducted in person by the Alternate Designated Agency Ethics Official, who provided specific advice about the limitations applicable to my current situation.

I meet regularly with the Principal Deputy Assistant Administrator who is the Acting Assistant Administrator of OLEM. Neither the Acting Administrator, nor the Acting Assistant Administrator of OLEM or anyone else has formally delegated any duties to me.

I am enclosing a copy of my signed ethics agreement, my Trump ethics pledge and recusal statement that makes clear that I am not permitted to work on any Superfund sites at which DowDuPont is a party or represents a party. I have not sought nor intend to seek any waivers under the Trump Ethics Pledge or the financial conflict of interest statutes. My EPA email address is [wright.peter@epa.gov](mailto:wright.peter@epa.gov), and that is the only EPA email address that I have. I have been and will continue to communicate regarding work-related matters using my EPA email exclusively. I do not expect to use any different email addresses, but if I do, I will provide such other address to you.

Should I be confirmed for the position of Assistant Administrator for the Office of Land and Emergency Management, I look forward to working with you and your staff on any issues that may arise.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter Wright', with a stylized, cursive script.

Peter Wright

Senior Counsel to the Acting Administrator

Enclosures

# United States Senate

WASHINGTON, DC 20510

July 23, 2018

Peter C. Wright  
Special Counsel to the Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Mr. Wright:

It has come to our attention that you have recently been appointed to the position of “special counsel to the Administrator” at the Environmental Protection Agency (EPA). This appointment was made while your nomination to serve as EPA’s Assistant Administrator for the Office of Land and Emergency Management (OLEM) remains under consideration by the Senate. Your appointment raises several concerns that we request you address.

The Federal Vacancies Reform Act of 1998 provides, with limited exceptions, the “exclusive means for temporarily authorizing an acting official to perform the functions and duties of any office of an Executive agency ... for which appointment is required to be made by the President, by and with the advice and consent of the Senate....” 5 U.S.C. § 3347. Further, as the Supreme Court held in *Buckley v. Valeo*, “any appointee exercising significant authority pursuant to the laws of the United States is an ‘Officer of the United States,’ and must, therefore, be appointed in the manner prescribed” in Article II, Section 2, clause 2 of the Constitution. 424 U.S. 1, 126 (1976). Accordingly, while you serve as “special counsel” it would be unlawful for you to assume any of the delegated authorities of the OLEM AA prior to the Senate’s confirmation of your nomination.

Your appointment runs the serious risk of circumventing the Senate’s constitutional advice and consent responsibility for the position to which you have been nominated. Your involvement in certain EPA decisions could provide grounds for subjects of EPA regulations and oversight to challenge the legal validity of those decisions in court.<sup>1</sup> To ensure your appointment complies with the requirements of the Federal Vacancies Reform Act of 1998, please respond to the following:

- What is your official job title and type of appointment (e.g., non-career SES, Schedule C, administratively-determined)? Who, if anyone, are you supervising? What is your relationship with the Acting OLEM AA? If you have a written job description, please provide a copy.
- Have any duties with the OLEM AA been formally delegated to you by the Administrator? Which, if any, OLEM AA duties are you presently performing?
- During your confirmation process, you entered into an ethics agreement dated March 7, 2018, that was approved by both EPA and the Office of Government Ethics and

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presented to the Senate Environment and Public Works Committee. As part of that agreement you stated that upon confirmation you would resign from The Dow Chemical Company and that within 90 days you would receive a severance payment and divest from your DowDuPont stock. Are you governed by the same ethics agreement in your current position? If not, what steps will you be taking to avoid actual or apparent conflicts of interest while your nomination remains pending in the Senate?

- Please provide a copy of your signed Trump ethics pledge, and copies of any waivers to the pledge or recusal statements you signed.
- Before your confirmation hearing, you submitted a June 19, 2018 draft of the recusal statement you planned to sign upon confirmation that, notably, stated you would recuse yourself from working on DowDupont Superfund sites. Have you signed this statement, and if not, why not, and when do you plan to do so?
- Do you commit to conducting all business using official email addresses or other official means and to refrain from any mediums that are outside the Freedom of Information Act's reach? Please provide all email addresses you have used since starting at EPA and any new ones within seven days of their use.
- In many of your responses to questions for the record, which were submitted after you began work at EPA, you noted your lack of familiarity with the subject matter and a commitment to seek more information following confirmation. Please provide substantive responses to questions 10, 11, 18, 19, 20, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 42, 56, 57 and 58.

We look forward to your prompt responses as it will help inform how we engage with your nomination.

Sincerely,

  
Thomas R. Carper  
United States Senator  
Sheldon Whitehouse  
United States Senator  
Bernard Sanders  
United States Senator  
Edward J. Markey  
United States Senator



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

WASHINGTON, D.C. 20460

August 28, 2018

The Honorable Bernard Sanders  
332 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senator Sanders:

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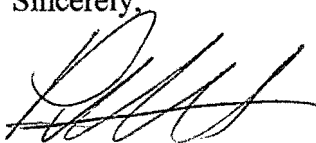
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Sincerely,

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Peter Wright

Senior Counsel to the Acting Administrator

Enclosures

# United States Senate

WASHINGTON, DC 20510

August 09, 2018

The Honorable Andrew Wheeler  
Acting Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20004

Dear Acting Administrator Wheeler:

We write to express our concerns with the Environmental Protection Agency's (EPA) proposed rule, published on April 30, 2018, titled "Strengthening Transparency in Regulatory Science" (Docket No. EPA-HQ-OA-2018-0259). We strongly urge you to withdraw it. EPA is already transparent in its use of peer-reviewed research in regulatory science. This particular proposal to "increase transparency" should not be used as a method to cast doubt on scientific consensus. In addition, the proposal lacks details on how its provisions would be implemented, specifically when it comes to privacy issues, reproducibility, and possible exemptions. It is also strongly opposed by nearly 70 public health, medical, academic, and scientific organizations.<sup>1</sup>

One provision in the proposed rule gives the Administrator of the EPA the authority, on a case-by-case basis, to exempt some studies from the proposed rule if he or she determines that "it is not feasible to ensure that all dose response data and models underlying pivotal regulatory science are publicly available in a fashion that is consistent with law, protects privacy and confidentiality, and is sensitive to national and homeland security." The criteria for these exemptions is unclear. The proposed rule does not require the Administrator to present the reasoning behind his or her decisions. This process would only result in additional uncertainty in the regulatory process. These decisions, should they need to be made, should not be made by a political appointee, but instead by a scientist that is a subject matter expert.

Additionally, EPA regulatory decisions are based largely on human health studies that include patients' personal data and medical records, sometimes over the span of decades. These studies must comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), making the release of this data illegal as well as unethical. Data in a medical chart, test results, and billing information all constitute federally identified personal health information that must be protected under HIPAA.

We realize that the proposed rule does make an attempt to address privacy issues while requiring increased transparency of scientific data. However, they are only addressed in a vague sense. The rule states that, "EPA believes that concerns about access to confidential or private information can, in many cases, be addressed through the application of solutions commonly in use across some parts of the Federal government," but it does not state what those solutions would be. It references simple data masking, coding, and de-identification techniques, but these methods will

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<sup>1</sup> <https://www.apha.org/news-and-media/news-releases/apha-news-releases/2018/epa-transparency>

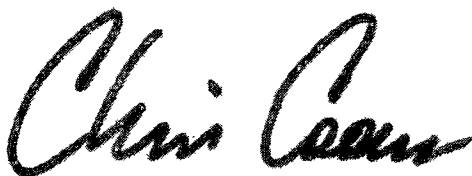
not sufficiently protect patient identity in studies such as those in which personal health information is integral to the study. We are concerned that this proposed rule has oversimplified the issue at hand, which will lead to difficulties in implementing this rule while maintaining EPA's commitment to using the best available science in its regulatory actions.

The phrase "best available science" is an important piece of this proposed rule. This proposed rule may be striving to improve regulatory science, but we fear that it could be a case in which the "best" is the enemy of the good. EPA cannot let their pursuit of "perfect science" lead them to disregard good scientific studies. Just as scientists cannot pick and choose the data they use for analysis, it is imperative that EPA use all available scientific studies to formulate its decisions. They should not ignore existing data.

To this point, five major scientific journals, including *Science*, *Nature*, *Cell*, *PLOS One*, and *Proceedings of the National Academy of Sciences* recently released a statement opposing this proposal. In it, they noted that many scientific journals already have policies to ensure transparency as much as possible. Additionally, in cases where such transparency is not possible, reviewers can be given confidential access to the raw data so that they can check and replicate the findings. The EPA proposal does not allow for such situations.<sup>2</sup>

We support transparency and scientific integrity. However, the proposed rule would limit transparency and undermine the scientific integrity of EPA's regulatory process. We strongly urge you to withdraw the proposed rule.

Sincerely,



Christopher A. Coons  
United States Senator



Jeffrey A. Merkley  
United States Senator

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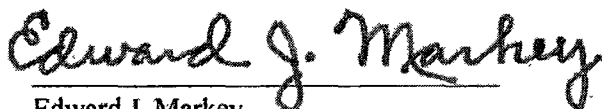
<sup>2</sup> <http://science.sciencemag.org/content/early/2018/04/30/science.aau0116>



Tina Smith  
United States Senator



Jeanne Shaheen  
United States Senator



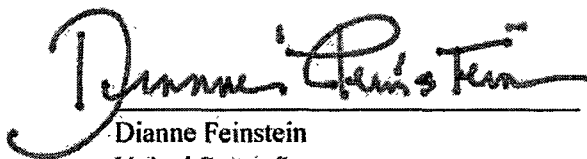
Edward J. Markey  
United States Senator



Richard J. Durbin  
United States Senator




Margaret Wood Hassan  
United States Senator



Dianne Feinstein  
United States Senator



Mazie Hirono  
United States Senator



Ron Wyden  
United States Senator



Kirsten Gillibrand  
United States Senator



Bernard Sanders  
United States Senator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP - 4 2018

OFFICE OF  
RESEARCH AND DEVELOPMENT

The Honorable Bernard Sanders  
United States Senate  
Washington, D.C. 20510

Dear Senator Sanders:

Thank you for your August 9, 2018 letter regarding the U.S. Environmental Protection Agency (EPA) proposed rule *Strengthening Transparency in Regulatory Science*. We appreciate your comments. Your letter has been entered into the docket and will be posted at <https://www.regulations.gov/document?D=EPA-HQ-OA-2018-0259-0001>.

If you have further questions, please contact me or your staff may contact Christina Moody in EPA's Office of Congressional and Intergovernmental Relations at [moody.christina@epa.gov](mailto:moody.christina@epa.gov) or (202) 564-0260.

Sincerely,

A handwritten signature in black ink, reading "Jennifer Orme-Zavaleta".

Jennifer Orme-Zavaleta, Ph.D.  
Principal Deputy Assistant Administrator for  
Science  
Office of Research and Development

JOHN BARRASSO, WYOMING, CHAIRMAN

JAMES M. RHODES, CALIFORNIA  
SHELLEY MOORE CAPITO, WEST VIRGINIA  
JOHN BOOZMAN, ARKANSAS  
ROGER WICKER, MISSISSIPPI  
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EDWARD J. MARKEY, MASSACHUSETTS  
TAMMY DUCKWORTH, ILLINOIS  
CARIS VAN HULLEN, MARYLAND

# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR  
MARY FRANCES HEPKILL, MINORITY STAFF DIRECTOR

October 9, 2018

The Honorable Andrew Wheeler  
Acting Administrator  
U.S. Environmental Protection Agency  
1301 Constitution Ave. NW  
Washington, DC 20460

Dear Acting Administrator Wheeler:

We write to urge you to stay firm to your commitment to “restoring the rule of law” at EPA.<sup>1</sup> Former EPA Administrator Scott Pruitt’s reign at EPA included a profound disregard for the mandates of statutory law, as well as attempts to obstruct the public’s ability to hold EPA accountable for fulfilling the laws’ requirements. Under former Administrator Pruitt’s direction, EPA improperly delayed the effective date of rules, delayed its responses to FOIA requests, failed to properly document rule proposals, and ignored administrative procedure.

The courts have also taken note of these deficiencies:

- On July 18, 2018, the 9<sup>th</sup> Circuit issued an emergency stay of Mr. Pruitt’s July 6, 2018 decision<sup>2</sup> not to enforce a rule imposing emission limits on certain super-polluting diesel freight trucks (or “gliders”). Following the court’s decision, you wisely withdrew Mr. Pruitt’s memo.<sup>3</sup>
- On August 9, 2018, the 9<sup>th</sup> Circuit ordered EPA to finalize a ban of the remaining uses of chlorpyrifos within 60 days,<sup>4</sup> rejecting Mr. Pruitt’s decision to overturn the Obama Administration’s proposed ban. The Court found that EPA was “acting against its own science findings” with “no justification,” and chastised “EPA’s continued failure to respond to the pressing health concerns presented by chlorpyrifos.”<sup>5</sup>
- On August 16, 2018, a federal district court in South Carolina held that EPA had violated the Administrative Procedure Act by failing to provide a meaningful opportunity for

<sup>1</sup> [https://www.washingtonpost.com/news/energy-environment/wp/2018/07/06/incoming-epa-chief-this-is-the-right-job-for-me/?utm\\_term=.c3cbcd390a8d](https://www.washingtonpost.com/news/energy-environment/wp/2018/07/06/incoming-epa-chief-this-is-the-right-job-for-me/?utm_term=.c3cbcd390a8d)

<sup>2</sup> [https://www.washingtonpost.com/national/health-science/epa-reverses-course-says-it-will-enforce-strict-pollution-limits-for-glider-trucks/2018/07/26/705ff4ee-9144-11e8-8322-b5482bf5e0f5\\_story.html?utm\\_term=.1c9fb066ccad](https://www.washingtonpost.com/national/health-science/epa-reverses-course-says-it-will-enforce-strict-pollution-limits-for-glider-trucks/2018/07/26/705ff4ee-9144-11e8-8322-b5482bf5e0f5_story.html?utm_term=.1c9fb066ccad)

<sup>3</sup> [https://www.epa.gov/sites/production/files/2018-07/documents/memo\\_re\\_withdrawal\\_of\\_conditional\\_naa\\_regarding\\_small\\_manufacturers\\_of\\_glider\\_vehicles\\_07-26-2018.pdf](https://www.epa.gov/sites/production/files/2018-07/documents/memo_re_withdrawal_of_conditional_naa_regarding_small_manufacturers_of_glider_vehicles_07-26-2018.pdf)

<sup>4</sup> <https://www.nytimes.com/2018/08/09/us/politics/chlorpyrifos-pesticide-ban-epa-court.html>

<sup>5</sup> <https://int.nyt.com/data/documenthelper/149-ninth-circuit-opinion-on-pesti/cc426d5eaf5ecfd14272/optimized/full-pdf#page=1> (citations and internal quotations omitted)

public input on its two-year delay of the Clean Water Rule.<sup>6</sup> The court noted that “an illusory opportunity to comment is no opportunity at all,”<sup>7</sup> and accordingly enjoined the delay, effectively reinstating the rule’s protections in 26 states.<sup>8</sup>

- On August 17, 2018, the D.C. Circuit found that EPA had made “a mockery” of the law when it delayed until February 2019<sup>9</sup> the effective date of the Obama Administration’s Risk Management Program (RMP) rule—also known as the “Chemical Disaster Rule”—designed to reduce risks associated with hazardous chemicals.<sup>10</sup> The court rejected EPA’s argument that the agency needed the delay in order to avoid confusion as it determined how to revise the rule: “[T]his ‘confusion,’” the judges wrote, “stems solely from the confusion EPA has caused by the almost two-years’ reconsideration it desires in order to decide what it wants to do. . . . [T]hat is not a basis for delaying protections.”<sup>11</sup> Accordingly, on September 21, 2018, the judges struck down the delay and thereby reinstated the Chemical Disaster Rule.<sup>12</sup>
- Federal courts have similarly rejected EPA’s delay of a rule to tighten training requirements for farmworkers applying toxic pesticides because it violated the Administrative Procedure Act;<sup>13</sup> EPA’s failure to respond to Connecticut’s petition requesting that EPA address pollution from a Pennsylvania power plant;<sup>14</sup> and EPA’s failure to meet its deadline to designate areas that do not meet its new National Ambient Air Quality Standard for ozone.<sup>15</sup>
- As of October 1, 2018, citizens have filed nearly 80 lawsuits alleging that the Trump Administration EPA has illegally failed to produce documents under the Freedom of Information Act (FOIA). While most of those cases are still in litigation, courts have ordered EPA to turn over documents in at least 20 cases, and the agency itself has turned over documents in at least 10 more cases under litigation pressure. By contrast, the agency appears to have won only two FOIA cases — on procedural, not substantive, grounds.

There are several examples of pending proposed rules crafted under former Administrator Pruitt’s tenure that are also clearly at risk of being soundly dismissed in court.

For example, earlier this year, EPA invited public comment on its ‘secret science’ proposal,<sup>16</sup> which would limit the scientific information used in rulemaking. This rule, if finalized, could cause the agency to ignore statutory mandates to use the “best available science” when making

<sup>6</sup> [https://www.americanbar.org/content/dam/aba/administrative/environment\\_energy\\_resources/resources/wotus/wotus/document\\_gw\\_05.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/environment_energy_resources/resources/wotus/wotus/document_gw_05.authcheckdam.pdf)

<sup>7</sup> [https://www.americanbar.org/content/dam/aba/administrative/environment\\_energy\\_resources/resources/wotus/wotus/document\\_gw\\_05.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/environment_energy_resources/resources/wotus/wotus/document_gw_05.authcheckdam.pdf)

<sup>8</sup> [https://www.americanbar.org/groups/environment\\_energy\\_resources/resources/wotus/wotus-rule.html](https://www.americanbar.org/groups/environment_energy_resources/resources/wotus/wotus-rule.html)

<sup>9</sup> <https://www.epa.gov/newsreleases/epa-extends-rmp-effective-date-2019>

<sup>10</sup> <https://newrepublic.com/minutes/144655/arkema-crisis-unfolding-epa-chemical-plant-safety-rule-hold>

<sup>11</sup> <https://connmaciel.files.wordpress.com/2018/08/air-alliance-dc-circuit.pdf>

<sup>12</sup> <https://insideepa.com/daily-news/dc-circuit-again-grants-bid-quickly-implement-epa-facility-safety-rule>

<sup>13</sup> <https://earthjustice.org/sites/default/files/files/cparRuling.pdf>

<sup>14</sup> <https://docs.justia.com/cases/federal/district-courts/connecticut/ctdce/3:2017cv00796/117590/52>

<sup>15</sup> [https://www.biologicaldiversity.org/programs/environmental\\_health/pdfs/72\\_Order-Summary-Judgment-03-12-2018.pdf](https://www.biologicaldiversity.org/programs/environmental_health/pdfs/72_Order-Summary-Judgment-03-12-2018.pdf)

<sup>16</sup> <https://www.epa.gov/newsreleases/epa-administrator-pruitt-proposes-rule-strengthen-science-used-epa-regulations>

rules, such as under the Toxic Substances Control Act<sup>17</sup> and Safe Drinking Water Act,<sup>18</sup> and would also run afoul of the Administrative Procedure Act if important scientific studies are submitted to the rulemaking record and EPA ignores them because its new rule required their exclusion.

The same is true for the recently reformed and bipartisan Toxic Substances Control Act, which tasked EPA with writing 'framework' rules for how the agency will evaluate the safety of existing chemicals and included new requirements for how the agency should evaluate the safety of new chemicals. All of these efforts are subject to litigation,<sup>19</sup> in large part because of EPA's failure to follow the statutory direction Congress gave the agency to evaluate the risk from all uses of a chemical.<sup>20</sup> Similarly, the rule exempting super-polluting glider trucks from emissions limits remains pending (despite a federal court's stay of Mr. Pruitt's "no action assurance" memo promising that industry that it would not be subject to EPA enforcement, and your subsequent revocation of that memo).<sup>21</sup>

We ask that you return the rule of law at EPA, as you committed to doing in your first address to the agency,<sup>22</sup> by withdrawing pending proposed rules or revising final rules and practices that either are unsupported by the best available evidence and expertise, conflict with existing statutory authority, or both.

The failure to quickly correct course will not only unduly and further delay the implementation of vital environmental protections and create an extended period of regulatory uncertainty for industry. In fact, continuing down this unwise path will also cost taxpayers money, since the federal government spends time and money defending these unsound rules in court. We therefore additionally request information about the amount of taxpayer funds that have been expended defending actions taken by former Administrator Pruitt. Please provide the following information by close of business on November 2, 2018:

1. From January 20, 2017 to the present, a list of all deadline lawsuits in which EPA was a party, the amount of government-paid attorney's fees and costs to the opposing party, and whether EPA settled or litigated the case;
2. From January 20, 2017 to the present, a list of all Freedom of Information Act lawsuits in which EPA was a party, the amount of government-paid attorney's fees and costs to the opposing party, and whether EPA settled or litigated the case; and
3. From January 20, 2017 to the present, a list of all non-deadline and non-FOIA lawsuits in which EPA was a party, the amount of government-paid attorney's fees and costs to the opposing party, and whether EPA settled or litigated the case.
4. For each lawsuit identified in your responses to questions 1 and 2, please state whether the lawsuit was subject to EPA's "Directive Promoting Transparency and Public

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<sup>17</sup> 15 U.S.C. 2625(h)

<sup>18</sup> 42 U.S.C. § 300g-1(b)(3)(A)

<sup>19</sup> [https://www.edf.org/media/edf-files-lawsuits-defend-reforms-chemical-safety-law?\\_ga=2.46289198.8299115-46.1534955811-2036426178.1532455459](https://www.edf.org/media/edf-files-lawsuits-defend-reforms-chemical-safety-law?_ga=2.46289198.8299115-46.1534955811-2036426178.1532455459)

<sup>20</sup> 15 U.S.C. §§ 2602-2603

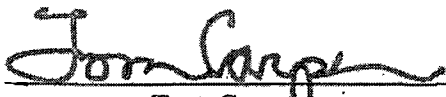
<sup>21</sup> <https://www.regulations.gov/document?D=EPA-HQ-OAR-2014-0827-2368>

<sup>22</sup> <https://www.washingtonexaminer.com/policy/energy/andrew-wheeler-promises-to-value-epa-staff-as-he-pursues-trumps-deregulatory-agenda>

Participation in Consent Decrees and Settlement Agreements." If the lawsuit was subject to the Directive, please state whether the parties settled or attempted to settle the matter, and whether non-parties were consulted on any potential settlement.

Thank you very much for your attention to this important matter. If you have any questions or concerns, please ask the appropriate members of your staff to contact Michal Freedhoff, of the Environment and Public Works Committee staff, at 202-224-8832.

Sincerely,



Tom Carper  
Ranking Member



Benjamin L. Cardin  
United States Senator



Bernard Sanders  
United States Senator



Sheldon Whitehouse  
United States Senator



Jeffery A. Merkley  
United States Senator



Kirsten Gillibrand  
United States Senator



Cory A. Booker  
United States Senator



Edward J. Markey  
United States Senator



Tammy Duckworth  
United States Senator



Chris Van Hollen  
United States Senator

# United States Senate

WASHINGTON, DC 20510

February 1, 2019

## VIA ELECTRONIC DELIVERY

The Honorable Andrew Wheeler  
Acting Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

Dear Acting Administrator Wheeler:

We are writing to request that the U.S. Environmental Protection Agency (EPA) reopen public comment periods for proposed regulations that closed during the shutdown, extend the comment period for all regulations that were open during the shutdown and reschedule all public hearings that were canceled as a result of the shutdown. Specifically, we request EPA extend these comment periods by no less than 35 days.

As you know, the majority of EPA's workforce was furloughed on December 29, 2018, limiting the services the Agency was capable of providing. During the government shutdown, Regulations.gov posted a message that the website was functionally unreliable and on January 17, 2019 the website was unavailable for 24 hours with a message stating that Regulations.gov was "not operational due to a lapse in funding, and will remain unavailable for the duration of the government shutdown."<sup>1</sup>

Further, the Federal Register's website, the Nation's clearinghouse of all Federal actions, maintained a banner during the shutdown stating the website was operating in a limited capacity. One of those limitations included public comments not being posted to the website. This prevented the normal practice of allowing the public to see or comment on other public comments. As is clear, the shutdown of the Federal Government impaired the public's access to the regulatory process causing tangible, serious and harmful effects.<sup>2</sup>

According to past precedent and EPA's own public health mission, a government shutdown cannot be allowed to obstruct public participation in our regulatory process. In 2013, the 16-day Federal Government shutdown similarly impacted EPA's ability to process its regulations. In an uncoordinated effort, agencies across the Federal Government, including EPA, extended and reopened comment periods and rescheduled public hearings. For instance, EPA rescheduled public

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<sup>1</sup> Wermund, B. (2019, January 17). Federal rulemaking site goes dark. Retrieved from <https://www.politico.com/story/2019/01/17/federal-website-down-shutdown-1108416>

<sup>2</sup> Heikkinen, N. (2019, January 14). EPA shutdown silences public inquiry over Ind. lead cleanup. GreenWire. Retrieved from <https://www.ecnews.net/greenwire/2019/01/14/stories/1060112797>

Letter to the Honorable Andrew Wheeler  
February 1, 2019

meetings and reopened public comments for toxic chemical reviews of Antimony Trioxide<sup>3</sup> and dichloromethane and N-Methylpyrrolidone.<sup>4</sup>

As of January 25, 2019, Regulations.gov had identified dozens of rules with comment periods, which were active or closed during the shutdown, including high profile rules such as EPA's proposed amendment to the wood heater rule. Now that EPA has reopened and employees are resuming their efforts to process regulations, we urge you to reopen all closed rules, reschedule all public hearings and extend all public comment periods so that everyday Americans are able to continue participating in our democratic processes. Thank you for your attention to this important matter.

Sincerely,



Tammy Duckworth  
United States Senator



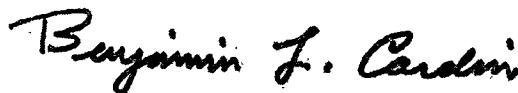
Thomas R. Carper  
United States Senator



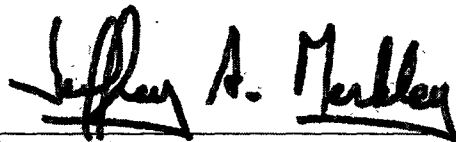
Sheldon Whitehouse  
United States Senator



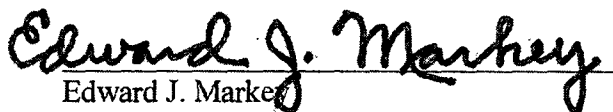
Cory A. Booker  
United States Senator



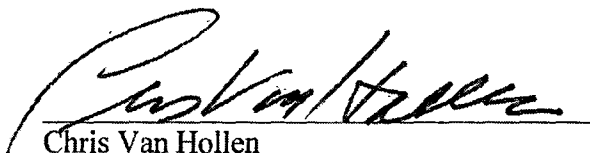
Benjamin L. Cardin  
United States Senator



Jeffrey A. Merkley  
United States Senator



Edward J. Markey  
United States Senator



Chris Van Hollen  
United States Senator

<sup>3</sup> Antimony Trioxide (ATO) TSCA Chemical Risk Assessment; Notice of Public Meetings and Opportunity To Comment, 78 FR 67141 (November 8, 2013) <https://www.federalregister.gov/documents/2013/11/08/2013-26846/antimony-trioxide-ato-tsca-chemical-risk-assessment-notice-of-public-meetings-and-opportunity-to>

<sup>4</sup> Dichloromethane and N-Methylpyrrolidone TSCA Chemical Risk Assessment; Notice of Rescheduled Public Meetings and Extension of Opportunity To Comment, 78 FR 64936, (October 30, 2013) <https://www.federalregister.gov/documents/2013/10/30/2013-25737/dichloromethane-and-n-methylpyrrolidone-tsca-chemical-risk-assessment-notice-of-rescheduled-public>

Letter to the Honorable Andrew Wheeler  
February 1, 2019



Kirsten Gillibrand  
United States Senator



Bernard Sanders  
United States Senator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAR 19 2019

OFFICE OF  
POLICY

The Honorable Bernard Sanders  
United States Senate  
Washington, D.C. 20510

Dear Senator Sanders:

On behalf of Administrator Andrew Wheeler, thank you for your February 1, 2019, letter to the U.S. Environmental Protection Agency regarding EPA activity affected by the government shutdown, including public hearings and comment periods for proposed regulations. The EPA is fully committed to promoting public participation in our regulatory process. Public hearings have been rescheduled; some comment periods affected by the shutdown have been extended or reopened.

For example, your letter mentioned the EPA's proposed amendment to the wood heater rule, "Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces" (83 FR 61574). The EPA reopened the comment period for this proposed action on February 7, 2019 (84 FR 2484). Similarly, on February 12, 2019, the EPA extended the comment period and rescheduled public hearings for another proposed rule, "Water Quality Standards; Establishment of a Numeric Criterion for Selenium for the State of California" (84 FR 3395).

Thank you again for your letter. If you have further questions, please contact me or your staff may contact Thea Williams in the EPA's Office of Congressional and Intergovernmental Relations at [williams.thea@epa.gov](mailto:williams.thea@epa.gov) or (202) 564-2064.

Sincerely,

A handwritten signature in black ink, appearing to read "Brittany Bolen".

Brittany Bolen  
Associate Administrator

# United States Senate

WASHINGTON, DC 20510

February 11, 2019

The Honorable Andrew Wheeler  
Acting Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

The Honorable R.D. James  
Assistant Sec. of the Army  
Office of the Assistant Secretary for Civil Works  
Department of the Army  
108 Army Pentagon  
Washington, DC 20310 – 0108

Dear Acting Administrator Wheeler and Assistant Secretary James:

We write to request an extension of the proposed comment period associated with the Environmental Protection Agency's (EPA's) and the U.S. Army Corps of Engineers' (Corps') proposed rule to replace the 2015 Clean Water Rule.

The 60-day comment period in the proposed rule is far too short to allow full review, careful analysis, and feedback from as many Americans potentially impacted by this endeavor as wish to share their views, including the millions of Americans who receive drinking water from the waterbodies affected by this proposal.

We would urge you to extend that comment period to at least the same duration as offered by the previous Administration – 207 days. As you know, EPA and the Corps extended the comment period on the prior rule twice in response to requests. The full comment period extended from April 21—November 14, 2014, yielding more than a million comments. It makes no sense to deny affected and concerned Americans the same opportunity to weigh in on your proposal to replace that rule.

Virtually every industry relies on clean water, and these interests—along with all Americans—want to know which waters are covered by federal law and regulation.

Given that your agencies have opted to affect the interests of these constituencies, every effort should be made to provide sufficient time for comment. Doing so will allow affected citizens to consider the proposal and its implications on their health, lives and livelihoods, and provide the feedback you seek. The 60 days you propose is simply not enough time to do so meaningfully.

We would appreciate hearing from you by February 25, 2019, on your intentions regarding this request.

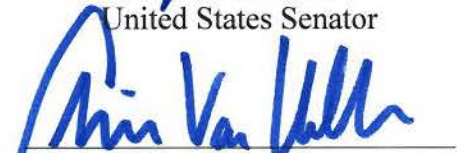
Sincerely,

  
Tom Carper

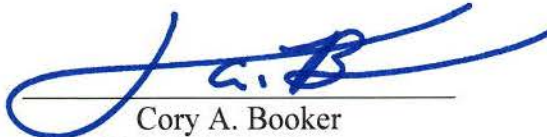
United States Senator

  
Tammy Duckworth

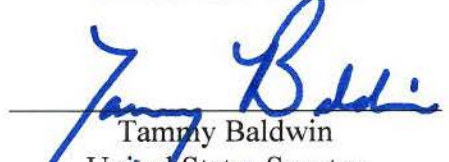
United States Senator

  
Chris Van Hollen


United States Senator

  
Cory A. Booker

United States Senator

  
Tammy Baldwin

United States Senator

  
Martin Heinrich

United States Senator

  
Jack Reed

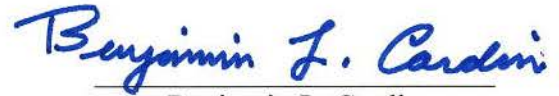
United States Senator

  
Debbie Stabenow

United States Senator

  
Edward J. Markey

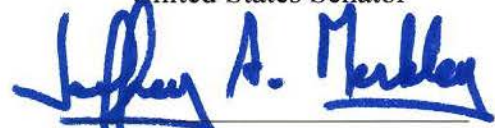
United States Senator

  
Benjamin L. Cardin

United States Senator

  
Sheldon Whitehouse

United States Senator

  
Jeffrey A. Merkley


United States Senator

  
Richard Blumenthal

United States Senator

  
Sherrod Brown

United States Senator

  
Amy Klobuchar

United States Senator

  
Kamala D. Harris

United States Senator

  
Kirsten Gillibrand

United States Senator

  
Margaret Wood Hassan

United States Senator



Jeanne Shaheen  
United States Senator



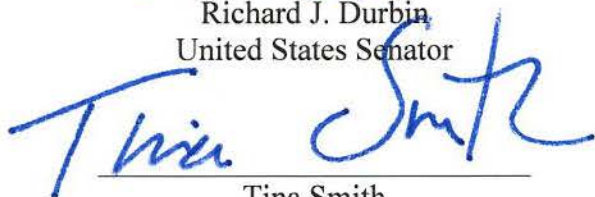
Tom Udall  
United States Senator



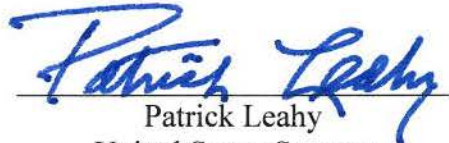
Tim Kaine  
United States Senator



Richard J. Durbin  
United States Senator



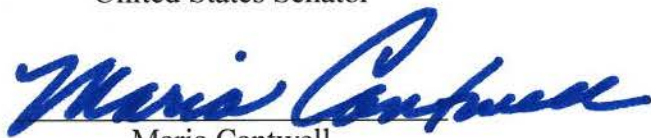
Tina Smith  
United States Senator



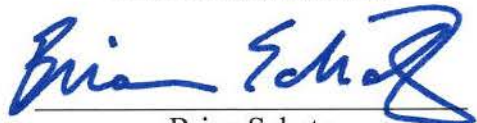
Patrick Leahy  
United States Senator



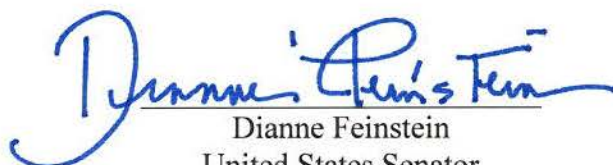
Mark R. Warner  
United States Senator



Maria Cantwell  
United States Senator



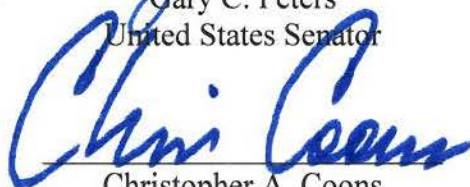
Brian Schatz  
United States Senator



Dianne Feinstein  
United States Senator



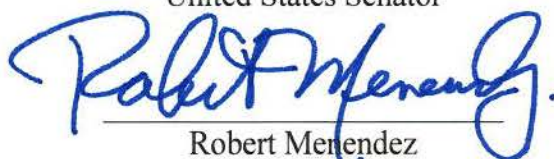
Gary C. Peters  
United States Senator



Christopher A. Coons  
United States Senator



Bernard Sanders  
United States Senator



Robert Menendez  
United States Senator



Ron Wyden  
United States Senator



Robert P. Casey  
United States Senator



Patty Murray  
United States Senator



Mazie K. Hirono  
United States Senator



APR - 5 2019



The Honorable Bernard Sanders  
United States Senate  
Washington, D.C. 20510

Dear Senator Sanders:

Thank you for your letter dated February 11, 2019, to the U.S. Environmental Protection Agency and the Department of the Army (together, "the agencies") requesting an extension of the public comment period for the proposed rule to revise the definition of "waters of the United States." The agencies appreciate your interest in this important issue.

After careful consideration, the agencies will maintain the current deadline of April 15, 2019, for submitting comments on the proposed revised definition of "waters of the United States." Multiple preliminary injunctions of the 2015 rule have resulted in a confusing patchwork of federal regulations in place across the country. The agencies are committed to moving as expeditiously as possible to restore regulatory certainty and to craft a rule that is clearer and easier to understand and respects the authority that the executive branch has been given under the Constitution and the Clean Water Act to regulate navigable waters.

The proposed rule and supporting documents have been available on the EPA's website since December 11, 2018, which will allow the public a total of 125 days to review. The agencies held a public hearing on February 27 and 28, 2019, and have also convened several meetings across the country with states, tribes, and other stakeholders. The agencies will consider all comments submitted by April 15, 2019, before finalizing the rulemaking. Additional information on the agencies' proposal can be found at: [epa.gov/wotus-rule](http://epa.gov/wotus-rule).

Thank you again for your letter. If you have further questions, please contact us, or your staff may contact Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at [borum.denis@epa.gov](mailto:borum.denis@epa.gov) or (202) 564-4836, or Stacey Jensen in the Army's Office of the Assistant Secretary (Civil Works) at [stacey.m.jensen.civ@mail.mil](mailto:stacey.m.jensen.civ@mail.mil) or at (703) 695-6791.

Respectfully yours,

A handwritten signature in black ink, appearing to read "D. Ross".

David P. Ross  
Assistant Administrator  
U.S. Environmental Protection Agency

A handwritten signature in blue ink, appearing to read "R.D. James".

R.D. James  
Assistant Secretary of the Army (Civil Works)  
Department of the Army

# United States Senate

WASHINGTON, DC 20510

April 15, 2019

The Honorable Andrew Wheeler  
Administrator  
U.S. Environmental Protection Agency 1200  
Pennsylvania Avenue NW  
Washington, D.C. 20004

The Honorable Ricky "R.D." James  
Assistant Secretary of the Army (Civil  
Works)  
U.S. Department of the Army  
108 Army Pentagon  
Washington, D.C. 20310

RE: Revised Definition of Waters of the United States  
Docket ID: EPA-HQ-OW-2018-0149

Dear Acting Administrator Wheeler and Assistant Secretary James:

We write in strong opposition to the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers' (USACE) proposed *Revised Definition of "Waters of the United States"* (WOTUS) rule, published in the Federal Register on February 14, 2019.

For more than 45 years, the Clean Water Act has preserved, protected and restored our Nation's most important natural resource. The Act has advanced its goals to maintain and restore the physical, chemical, and biological integrity of the nation's waters. That is why admirers of the Clean Water Act appropriately labeled this landmark law as one of the most successful public health initiatives ever enacted. Today's progress is the result of hard work, strict enforcement and billions of dollars invested in remediation and infrastructure.

Continued success of the Clean Water Act requires a clear and scientifically sound definition for determining which bodies of water are protected, while protecting those waters that influence the physical, chemical, and biological integrity of the nation's waters—the goal at the heart of the Act. However, the proposed rule provides neither the certainty requested by our constituents, nor the clean and healthy waters upon which we all depend. Instead, this draft makes it nearly impossible for stakeholders and regulators to easily and consistently define perennial, intermittent and ephemeral streams. Far from fulfilling the President's promise to create a nationally consistent rule, this proposal injects ambiguity into the law at the expense of our decades of progress in cleaning up our waters.

Contrary to previous administrations, the 2018 WOTUS proposed rule eliminates all protections for ephemeral streams and many wetlands by ignoring former U.S. Supreme Court Justice Anthony Kennedy's central opinion in *Rapanos v. United States* that calls for a "significant nexus" test, which requires the regulating agency to determine if the wetland or waterway has a

chemical, biological or hydrological connection to downstream waters for establishing jurisdiction. While the proposed rule acknowledges that previous administrations and the courts have relied on Justice Kennedy's significant nexus test as an essential component of assessing water bodies' status under the Clean Water Act, it provides no sound justification for its shift away from this established significant nexus standard.

EPA's 2015 report titled, "Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence," provides overwhelming scientific evidence that the significant nexus test is met for all tributary streams, regardless of flow, and all floodplain wetlands and open waters. These features significantly affect the physical, chemical, and biological condition the traditionally navigable waters and interstate waters with which they interact. As the Connectivity Report states:

The scientific literature unequivocally demonstrates that streams, individually or cumulatively, exert a strong influence on the integrity of downstream waters. All tributary streams, including perennial, intermittent, and ephemeral streams, are physically, chemically, and biologically connected to downstream rivers via channels and associated alluvial deposits where water and other materials are concentrated, mixed, transformed, and transported.

The literature clearly shows that wetlands and open waters in riparian areas and floodplains are physically, chemically, and biologically integrated with rivers via functions that improve downstream water quality, including the temporary storage and deposition of channel-forming sediment and woody debris, temporary storage of local ground water that supports baseflow in rivers, and transformation and transport of stored organic matter.

The Report likewise finds that non-floodplain wetlands, including so-called "isolated" wetlands, "provide numerous functions that benefit downstream water integrity. These functions include storage of floodwater; recharge of ground water that sustains river baseflow; retention and transformation of nutrients, metals, and pesticides; export of organisms or reproductive propagules to downstream waters; and habitats needed for stream species."

Eliminating protections for ephemeral streams and most wetlands abandons the significant nexus jurisdictional standard and undermines the goals of the Clean Water Act. Furthermore, the rule's novel and ambiguous definitions inject uncertainty by requiring regulators, landowners, and other stakeholders to conduct long-term monitoring programs in order to distinguish between streams that flow intermittently or ephemerally. The rule's approach ignores the significant nexus standard and the underlying connectivity science and deviates from longstanding agency practice. Consequently, adopting this proposal would guarantee confusion and will make the final rule legally vulnerable when it is inevitably challenged in the U.S. courts.

The Administration's analysis supporting the revised WOTUS rule also overestimates the potential for states to protect their waters and wetlands in the absence of Federal responsibility under the Clean Water Act. While some states can and do enforce stronger water pollution laws, many states lack the financial resources to sustain protective state pollution control programs

absent Federal support. Moreover, seven states are prohibited from establishing rules that exceed national minimum standards set by the Clean Water Act, and many more have at least some limitation on protecting waters beyond whatever Federal standards may exist. For these states, the Federal standards may become both the floor and the ceiling, and this proposed rule would create an enforcement gap for ephemeral streams and wetlands lacking a surface water connection to other protected waters. This troubling fiscal and regulatory landscape among states limits their inability to ramp up their clean water enforcement programs to compensate for the Federal Government's abrogation of its clean water obligations.

Failing to accurately characterize state circumstances, the *Economic Analysis for the Proposed Revised Definition of "Waters of the United States"* wrongly assumes that "states with existing [dredge-and-fill permit] programs, regardless of scope, are likely to have the capacity and interest to regulate waters that may no longer be jurisdictional following a change in the definition of 'Waters of the United States.'" Indeed, 30 states have no permitting programs for so-called "isolated," non-floodplain wetlands, and theoretically under the proposed WOTUS rule, would have no restrictions on dumping, draining, filling and other damaging wetlands activities. Furthermore, 33 states have no monitoring and assessment programs, so would have no means to know who is destroying wetlands and for what purpose. The Clean Water Act encourages states to be more protective than its minimum "federal floor" requirements, and yet the reality is states are going in the opposite direction—passing laws that make it difficult or impossible to go further than the Federal law. Clearly, many states want to protect their waters and wetlands less, not more. Even states with robust programs would need to expand their budgets and programmatic scope to prevent any significant lapse in protections for streams and wetlands. And states that invest in strong programs still cannot protect their waters from pollution originating in upstream states with less protective pollution control programs.

In response to questions for the record following EPA Administrator Wheeler's confirmation hearing before the Senate Environment and Public Works Committee, EPA and the USACE demonstrated they do not possess even remotely reliable estimates of the number and extent of waters that would be affected by this proposed rule.<sup>[1]</sup> What these unreliable data suggest is disturbing enough: estimates by USACE and EPA suggest at least 18 percent of streams and 51 percent of wetlands will not be protected under the new rule, as proposed.<sup>[2]</sup> Under the proposal, the Trump Administration asks commenters to suggest even more radical exclusions from Federal protection, potentially expanding the scale of impacted waters well beyond the base proposal.

At best, the agencies have been careless in proposing this rule. At worst, they have failed to meet their duties to inform the public, uphold the law, and protect the public and the environment. This proposed rule ignores Justice Kennedy's significant nexus standard, which courts have found to be an essential element of the jurisdictional standard. It ignores the

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<sup>[1]</sup> "Carper Releases Acting Administrator Andrew Wheeler's Responses to Questions for the Record." 29 Jan. 2019, [www.epw.senate.gov/public/index.cfm/press-releases-democratic?ID=A51C28E0-D79B-453E-AB57-29E485EEE5AA](http://www.epw.senate.gov/public/index.cfm/press-releases-democratic?ID=A51C28E0-D79B-453E-AB57-29E485EEE5AA).

<sup>[2]</sup> Wittenberg, Ariel. "Trump's WOTUS: Clear as Mud, Scientists Say." *E&E News*, 18 Feb. 2019, [www.eenews.net/stories/1060121251](http://www.eenews.net/stories/1060121251).

scientific connectivity between waterbodies upstream and downstream. And, it deviates from the longstanding jurisdictional legal reasoning and practices applied by previous administrations' WOTUS rules and policies. As a result, courts will likely find that this rule fails to abide by the Administrative Procedure Act and arbitrarily and capriciously shrinks the "waters of the United States" protected by the Clean Water Act, putting millions of wetland acres and stream miles at increased risk of pollution and destruction.

Americans deserve and expect safe drinking water. Americans expect their Government to protect their waterways. This proposed rule provides them none of that comfort or assurance. Instead, we fear—as many Americans do—that this proposed rule will compromise their health, their environment and their economy.

Protecting our waters and wetlands is not just a legal responsibility or scientific aspiration, it is a moral obligation. As a Nation, we should be advancing toward these responsibilities, aspirations and obligations, not retreating to appease the relative few. We urge you to withdraw this proposed rulemaking and reconsider how our Nation should define which waters deserve the Clean Water Act's strong protections.

Sincerely,



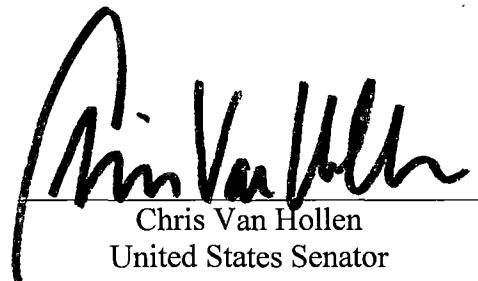
Tom Carper  
Ranking Member  
Committee on Environment and  
Public Works



Tammy Duckworth  
United States Senator



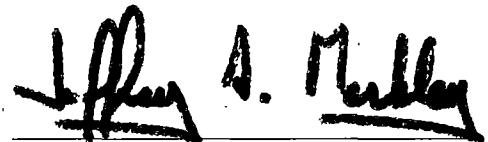
Benjamin L. Cardin  
United States Senator



Chris Van Hollen  
United States Senator



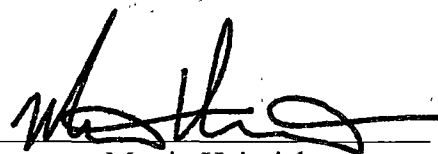
Richard Blumenthal  
United States Senator



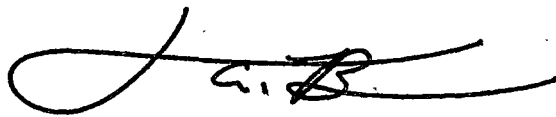
Jeffrey A. Merkley  
United States Senator



Sheldon Whitehouse  
United States Senator



Martin Heinrich  
United States Senator



Cory A. Booker  
United States Senator



Kirsten Gillibrand  
United States Senator



Kamala D. Harris  
United States Senator



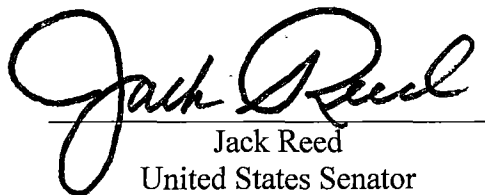
Robert P. Casey Jr.  
United States Senator



Edward J. Markey  
United States Senator



Mazie K. Hirono  
United States Senator



Jack Reed  
United States Senator



Bernard Sanders  
United States Senator



JUN 13 2019



The Honorable Bernard Sanders  
United States Senate  
Washington, D.C. 20510

Dear Senator Sanders:

Thank you for your April 15, 2019 letter to the U.S. Environmental Protection Agency and the U.S. Department of the Army regarding the EPA's and the Army's proposed rulemaking to define the scope of the Clean Water Act.

We appreciate the comments you have provided on our proposed rule. We are including your letter in the official docket, identified by Docket ID EPA-HQ-OW-2018-0149 at [regulations.gov](https://www.regulations.gov). We will consider your comments and all comments received on the proposed rule when deciding what, if any, changes to make to the final rule.

Thank you again for your letter. We look forward to working with Congress as our rulemaking effort moves forward. Please contact us if you have additional questions on this issue, or your staff may contact Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at [borum.denis@epa.gov](mailto:borum.denis@epa.gov) or (202) 564-4836, or Ms. Stacey Jensen in the Office of the Assistant Secretary of the Army (Civil Works) at [stacey.m.jensen.civ@mail.mil](mailto:stacey.m.jensen.civ@mail.mil) or (703) 695-6791.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Ross".

David P. Ross  
Assistant Administrator for Water  
U.S. Environmental Protection Agency

A handwritten signature in black ink, appearing to read "Ryan A. Fisher".

Ryan A. Fisher  
Principal Deputy Assistant Secretary  
U.S. Department of the Army (Civil Works)